

1 Nile Leatham (NV Bar No. 002838)

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2 KOLESAR & LEATHAM

3 Wells Fargo Financial Center

3320 W. Sahara Ave.

Las Vegas, NV 89102

4 Telephone: 702.979.2357

Facsimile: 702.362.9472

5 E-Mail: nleatham@klnevada.com

6 Philip C. Dublin (NY Bar No. 2959344)

7 Abid Qureshi (NY Bar No. 2684637)

AKIN GUMP STRAUSS HAUER & FELD LLP

8 One Bryant Park

New York, NY 10036

9 Telephone: 212.872.1000

10 Facsimile: 212.872.1002

E-Mail: [pdublin@akingump.com](mailto:pdublin@akingump.com)

[aqureshi@akingump.com](mailto:aqureshi@akingump.com)

12 *Counsel for the First Lien Steering Committee*

13 **UNITED STATES BANKRUPTCY COURT**  
14 **DISTRICT OF NEVADA**

15 In re:

Case No.: BK-S-09-14814-LBR  
(Jointly Administered)

16 THE RHODES COMPANIES, LLC, aka  
17 "Rhodes Homes," et al.,<sup>1</sup>

Chapter 11

Debtors.

18 Affects:

Hearing Date: October 30, 2009

19 ☒ All Debtors

Hearing Time: 1:30 p.m.

21 <sup>1</sup>The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case  
22 No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817);  
Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho  
23 Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited  
Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc.  
(Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J  
24 Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design  
and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions  
25 IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II,  
LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf Country Club,  
26 LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife,  
LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP  
(Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868);  
27 Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884);  
and Pinnacle Grading, LLC (Case No. 09-14887).

☐ Affects the following Debtor(s)

Courtroom 1

**FIRST AMENDED DISCLOSURE  
STATEMENT FOR THE FIRST  
AMENDED PLAN OF  
REORGANIZATION PURSUANT TO  
CHAPTER 11 OF THE UNITED STATES  
BANKRUPTCY CODE FOR THE  
RHODES COMPANIES, LLC, ET AL.**

THIS DISCLOSURE STATEMENT (THE "DISCLOSURE STATEMENT") CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE FOR THE RHODES COMPANIES, LLC, ET AL. (THE "PLAN"), CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE DEBTORS' CHAPTER 11 CASES AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE FIRST LIEN STEERING COMMITTEE BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS. THE INFORMATION INCLUDED HEREIN IS FOR PURPOSES OF SOLICITING ACCEPTANCE OF THE PLAN AND SHOULD NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER AND HOW TO VOTE ON THE PLAN. THE SUMMARIES OF THE FINANCIAL INFORMATION AND THE DOCUMENTS THAT ARE ATTACHED HERETO OR INCORPORATED BY REFERENCE HEREIN ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO SUCH INFORMATION AND DOCUMENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THE DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION INCORPORATED HEREIN BY REFERENCE, THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION, AS THE CASE MAY BE, SHALL GOVERN FOR ALL PURPOSES. FACTUAL INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE FIRST LIEN STEERING COMMITTEE DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT INFER THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN BETWEEN THE DATE HEREOF AND THE TIME OF SUCH REVIEW. EACH HOLDER OF A CLAIM ENTITLED TO VOTE ON THE

AKIN GUMP STRAUSS HAUER & FELD LLP  
One Bryant Park  
New York, New York 10036  
Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

1 PLAN SHOULD CAREFULLY REVIEW THE PLAN, THE DISCLOSURE STATEMENT,  
2 AND EXHIBITS TO THE PLAN IN THEIR ENTIRETY BEFORE CASTING A BALLOT.  
3 THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS,  
4 FINANCIAL OR TAX ADVICE. ANY PERSONS DESIRING ANY SUCH ADVICE OR  
5 OTHER ADVICE SHOULD CONSULT WITH THEIR OWN ADVISORS.

6 NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT  
7 TO THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THE DISCLOSURE  
8 STATEMENT. NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE  
9 VALUE OF THEIR PROPERTY HAVE BEEN AUTHORIZED BY THE FIRST LIEN  
10 STEERING COMMITTEE OTHER THAN AS SET FORTH IN THE DISCLOSURE  
11 STATEMENT. ANY INFORMATION, REPRESENTATIONS OR INDUCEMENTS  
12 MADE TO OBTAIN AN ACCEPTANCE OF THE PLAN THAT ARE OTHER THAN, OR  
13 INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN AND IN THE  
14 PLAN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR  
15 INTEREST.

16 WITH RESPECT TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS  
17 AND OTHER PENDING, THREATENED OR POTENTIAL LITIGATION OR ACTIONS,  
18 THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE AND MAY NOT BE  
19 CONSTRUED AS AN ADMISSION OF FACT, LIABILITY, STIPULATION OR  
20 WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT  
21 NEGOTIATIONS AND PROTECTED BY RULE 408 OF THE FEDERAL RULES OF  
22 EVIDENCE.

23 THE DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR  
24 DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE  
25 COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY  
26 OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

27 ALTHOUGH THE FIRST LIEN STEERING COMMITTEE HAS USED ITS BEST  
28 EFFORTS TO ENSURE THE ACCURACY OF THE FINANCIAL INFORMATION  
PROVIDED IN THE DISCLOSURE STATEMENT, THE FINANCIAL INFORMATION  
CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THE DISCLOSURE  
STATEMENT HAS NOT BEEN AUDITED.

THE PROJECTIONS PROVIDED IN THE DISCLOSURE STATEMENT HAVE  
BEEN PREPARED BY THE FIRST LIEN STEERING COMMITTEE WITH THE  
ASSISTANCE OF ITS ADVISORS. THESE PROJECTIONS, WHILE PRESENTED WITH  
NUMERICAL SPECIFICITY, ARE NECESSARILY BASED ON A VARIETY OF  
ESTIMATES AND ASSUMPTIONS THAT, THOUGH CONSIDERED REASONABLE BY  
THE FIRST LIEN STEERING COMMITTEE, MAY NOT BE REALIZED AND ARE  
INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, COMPETITIVE,  
INDUSTRY, REGULATORY, MARKET AND FINANCIAL UNCERTAINTIES AND  
CONTINGENCIES, MANY OF WHICH ARE BEYOND THE FIRST LIEN STEERING  
COMMITTEE'S CONTROL. THE FIRST LIEN STEERING COMMITTEE CAUTIONS

AKIN GUMP STRAUSS HAUER & FELD LLP

One Bryant Park

New York, New York 10036

Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

1 THAT NO REPRESENTATIONS CAN BE MADE AS TO THE ACCURACY OF THESE  
2 PROJECTIONS OR TO THE ABILITY TO ACHIEVE THE PROJECTED RESULTS.  
3 SOME ASSUMPTIONS INEVITABLY WILL NOT MATERIALIZE. FURTHER,  
4 EVENTS AND CIRCUMSTANCES OCCURRING SUBSEQUENT TO THE DATE ON  
5 WHICH THESE PROJECTIONS WERE PREPARED MAY BE DIFFERENT FROM  
6 THOSE ASSUMED OR, ALTERNATIVELY, MAY HAVE BEEN UNANTICIPATED,  
7 AND THUS THE OCCURRENCE OF THESE EVENTS MAY AFFECT FINANCIAL  
8 RESULTS IN A MATERIALLY ADVERSE OR MATERIALLY BENEFICIAL MANNER.  
9 THE PROJECTIONS, THEREFORE, MAY NOT BE RELIED UPON AS A GUARANTY  
10 OR OTHER ASSURANCE OF THE ACTUAL RESULTS THAT WILL OCCUR.

11 SEE ARTICLE VI OF THE DISCLOSURE STATEMENT, ENTITLED "CERTAIN  
12 FACTORS TO BE CONSIDERED PRIOR TO VOTING," FOR A DISCUSSION OF  
13 CERTAIN CONSIDERATIONS IN CONNECTION WITH A DECISION BY A HOLDER  
14 OF AN IMPAIRED CLAIM TO ACCEPT OR REJECT THE PLAN.

15 THE DISCLOSURE STATEMENT HAS BEEN DETERMINED BY THE  
16 BANKRUPTCY COURT TO CONTAIN ADEQUATE INFORMATION AS REQUIRED  
17 BY SECTION 1125 OF TITLE 11 OF THE UNITED STATES CODE, 11 U.S.C. §§ 101 -  
18 1532 (THE "BANKRUPTCY CODE"), WHICH DETERMINATION DOES NOT  
19 CONSTITUTE A RECOMMENDATION OR APPROVAL OF THE PLAN.

20 UNLESS OTHERWISE STATED, ANY CAPITALIZED TERM USED HEREIN  
21 SHALL HAVE THE MEANING ASSIGNED TO SUCH TERM HEREIN OR, IF NO  
22 MEANING IS SO ASSIGNED, THE MEANING ASSIGNED TO SUCH TERM IN THE  
23 PLAN.

24 THE BANKRUPTCY COURT HAS SCHEDULED THE CONFIRMATION  
25 HEARING TO COMMENCE ON [DECEMBER 17], 2009 AT [9:30 a.m.]  
26 PREVAILING PACIFIC TIME BEFORE THE HONORABLE LINDA B. RIEGLE,  
27 UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES  
28 BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA, IN COURTROOM 1 IN  
THE FOLEY FEDERAL BUILDING LOCATED AT 300 LAS VEGAS BOULEVARD  
SOUTH, LAS VEGAS, NEVADA 89101. THE CONFIRMATION HEARING MAY BE  
ADJOURNED FROM TIME TO TIME BY THE BANKRUPTCY COURT WITHOUT  
FURTHER NOTICE OTHER THAN AN ANNOUNCEMENT OF THE ADJOURNED  
DATE MADE AT THE CONFIRMATION HEARING OR ANY ADJOURNMENT  
THEREOF.

OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED AND  
SERVED ON OR BEFORE [DECEMBER 3], 2009, IN ACCORDANCE WITH THE  
SOLICITATION NOTICE THAT THE FIRST LIEN STEERING COMMITTEE  
FILED AND SERVED ON HOLDERS OF CLAIMS, HOLDERS OF INTERESTS AND  
OTHER PARTIES IN INTEREST. IF OBJECTIONS TO CONFIRMATION ARE  
NOT TIMELY SERVED AND FILED IN COMPLIANCE WITH THE

1 SOLICITATION NOTICE, THEY MAY NOT BE CONSIDERED BY THE  
2 BANKRUPTCY COURT.  
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AKIN GUMP STRAUSS HAUER & FELD LLP  
One Bryant Park  
New York, New York 10036  
Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

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AKIN GUMP STRAUSS HAUER & FELD LLP

One Bryant Park

New York, New York 10036

Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

## ARTICLE I. SUMMARY

The following summary is qualified in its entirety by the more detailed information contained in the Plan and elsewhere in the Disclosure Statement.

On either March 31, 2009 or April, 1, 2009 (collectively, the "Petition Date"), The Rhodes Companies, LLC and certain of its affiliates and subsidiaries (collectively, the "Debtors") each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. Prior to and after the Petition Date, the Debtors operated one of the largest independent homebuilding businesses in Las Vegas and Nevada.

The Disclosure Statement is being furnished by the First Lien Steering Committee pursuant to section 1125 of the Bankruptcy Code in connection with: (a) the solicitation of votes for the acceptance or rejection of the Plan and (b) the confirmation hearing (the "Confirmation Hearing"), which is scheduled for [December 17], 2009 at [9:30 a.m.] Pacific Time (the "Confirmation Hearing Date"). A copy of the Plan is annexed hereto as Exhibit A and incorporated by reference herein.

The Disclosure Statement describes certain aspects of the Plan, including the treatment of Claims and Interests, and describes certain aspects of the Debtors' operations, projections and other related matters.

### A. Rules of Interpretation

The following rules for interpretation and construction shall apply to the Disclosure Statement: (1) capitalized terms used in the Disclosure Statement and not otherwise defined shall have the meanings ascribed to such terms in Article I.A of the Plan; (2) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine and the neuter gender; (3) unless otherwise specified, any reference in the Disclosure Statement to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (4) unless otherwise specified, any reference in the Disclosure Statement to an existing document, schedule or exhibit, whether or not Filed, shall mean such document, schedule or exhibit, as it may have been or may be amended, modified or supplemented; (5) any reference to an Entity as a Holder of a Claim or Interest includes that Entity's successors and assigns; (6) unless otherwise specified, all references in the Disclosure Statement to Articles are references to Articles of the Disclosure Statement or to the Disclosure Statement; (7) unless otherwise specified, all references in the Disclosure Statement to exhibits are references to exhibits in the Plan Supplement; (8) the words "herein," "hereof," and "hereto" refer to the Disclosure Statement in its entirety rather than to a particular portion of the Disclosure Statement; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Disclosure Statement; (10) unless otherwise set forth in the Disclosure Statement, the rules of construction set forth in Bankruptcy Code section 102 shall apply; (11)



AKIN GUMP STRAUSS HAUER & FELD LLP  
 One Bryant Park  
 New York, New York 10036  
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any term used in capitalized form in the Disclosure Statement that is not otherwise defined in the Disclosure Statement or the Plan but that is used in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (12) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's Case Management/Electronic Case Filing ("CM/ECF") system; (13) all references to statutes, regulations orders, rules of courts and the like shall mean as amended from time to time, unless otherwise stated; (14) in computing any period of time prescribed or allowed, the provisions of Bankruptcy Rule 9006(a) shall apply, and if the date on which a transaction may occur pursuant to this Disclosure Statement shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day; and (15) unless otherwise specified, all references in the Disclosure Statement to monetary figures shall refer to currency of the United States of America.

#### B. The Purpose of the Plan

The Plan effectuates a reorganization of the Debtors through the issuance of debt and equity in Newco, and the preservation of their business operations and going concern value. Holders of Old Equity Interests will neither receive, nor retain, any property under the Plan, and any potential Causes of Action not released under the Plan will be preserved (subject to any available defenses to such Causes of Action) and prosecuted and litigated, as may be appropriate, by the Reorganized Debtors or the Litigation Trust, and/or their respective successors. The Plan will be funded by way of the Debtors' Cash on hand, existing assets, and the issuance of the New First Lien Notes and Newco Equity Interests.

The Plan contemplates and is predicated upon the substantive consolidation of the Chapter 11 Cases into a single proceeding solely for the purposes of the Chapter 11 Cases and all actions with respect to confirmation, consummation and implementation of the Plan as set forth in more detail in ARTICLE IV below.

As set forth herein and in the exhibits hereto, the First Lien Steering Committee has estimated, based on certain hypothetical operating projections and an assessment of other available assets, the value to be realized from the Debtors' Estates under the Plan. Pursuant to the Plan, Holders of Allowed First Lien Lender Claims will receive their pro rata share of \$1.5 million in Cash, the New First Lien Notes, Newco Equity Interests and the Litigation Trust Interests allocable to the Holders of the First Lien Lender Claims as set forth in ARTICLE IV below.

Holders of Allowed Second Lien Lender Claims will receive a portion of the proceeds from the Stanley Engineering Litigation and their pro rata share of the Litigation Trust Interests allocable to the Holders of the Second Lien Lender Claims if such Holders vote in favor of the Plan; or if such Holders do not vote in favor of the Plan, their pro rata share of the Litigation Trust Interests allocable to the Holders of the Second Lien Lender Claims. Holders of Allowed General Unsecured Claims will receive their pro rata share of Litigation Trust Interests allocable to the Holders of General Unsecured Claims.

All Old Equity Interests will be extinguished and the Holders of such Old Equity Interests will not receive or retain any property on account of such Old Equity Interests. Intercompany Claims of the Debtors will be extinguished through the Plan and such Holders will not directly receive or retain any property under the Plan on account of such Old Equity Interests unless the Reorganized Debtors elect to reinstate such Claims. Holders of Subordinated Claims will not receive or retain any property on account of their Claims.

Finally, all other Allowed Claims, such as Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims and Other Secured Claims, will be Unimpaired pursuant to the terms of the Plan.

#### C. The Debtors' Principal Assets and Indebtedness

The principal assets of the Debtors include their homebuilding assets, which include inventory of undeveloped land and developed lots, and constructed homes (sold and unsold). The Debtors' principal indebtedness includes: (1) First Lien Lender Claims; (2) Second Lien Lender Claims; (3) Other Secured Claims; (4) Priority Non-Tax Claims; (5) General Unsecured Claims; (6) Rhodes Entities Claims; (7) Insured Claims; (8) Subordinated Claims; and (9) Intercompany Claims.

#### D. Treatment of Claims and Interests

Except for unclassified Administrative Claims and Priority Tax Claims, the Plan divides all Claims against the Debtors into various Classes. The table set forth below summarizes the Classes of Claims and Interests under the Plan, the treatment of Claims and Interests and projected recovery for Holders of Allowed Claims in such Classes and the entitlement of Holders of Claims in such Classes to vote to accept or reject the Plan.

The allowance, classification and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Reorganized Debtors reserve the right to reclassify any Allowed Claim or Interest in accordance with any contractual, legal or equitable subordination relating thereto.

#### 1. Summary and Treatment of Allowed Unclassified Claims.

DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS (CONSOLIDATED BASIS)	TREATMENT FOR ALLOWED CLAIMS
Administrative Claims	\$750,000	Each Allowed Administrative Claim shall be paid in full, in Cash, (i) on the later of (a) the Effective Date, (b) the date on which the Bankruptcy Court enters an order allowing such Allowed Administrative Claim, or (c) the date on which the

AKIN GUMP STRAUSS HAUER & FELD LLP  
 One Bryant Park  
 New York, New York 10036  
 Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

Reorganized Debtors or the Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent) and the Holder of such Allowed Administrative Claim otherwise agree, and (ii) in such amounts as (a) are incurred in the ordinary course of business by the Debtors, (b) are Allowed by the Bankruptcy Court, (c) may be agreed upon between the Holder of such Allowed Administrative Claim and the Reorganized Debtors or the Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent), or (d) may otherwise be required under applicable law. Such Allowed Administrative Claims shall include costs incurred in the operation of the Debtors' businesses after the Petition Date, the allowed fees and expenses of Professionals retained by the Debtors and the Creditors' Committee and the fees due to the United States Trustee pursuant to 28 U.S.C. § 1930.

Priority Tax Claims \$125,000

Allowed Priority Tax Claims shall be paid in full, in Cash, upon the later of (a) the Effective Date, (b) the date upon which there is a Final Order allowing such Claim as an Allowed Priority Tax Claim, (c) the date that such Allowed Priority Tax Claim would have been due if the Chapter 11 Cases had not been commenced, or (d) upon such other terms as may be agreed to between the Reorganized Debtors or the Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent), and any Holder of an Allowed Priority Tax Claim; provided, however, that the Reorganized Debtors or Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent), in lieu of payment in full of Allowed Priority Tax Claims on the Effective Date, may make Cash payments respecting Allowed Priority Tax Claims deferred to the extent permitted by Section 1129(a)(9) of the Bankruptcy Code and, in such event, unless otherwise provided herein, interest shall be paid on the unpaid portion of such Allowed Priority Tax Claim at the Federal statutory rate; provided, further, that deferred Cash payments on account of an Allowed Priority Tax Claim shall be paid quarterly over a period of six years commencing with the quarter after which such Priority Tax Claim has been Allowed.

CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS (CONSOLIDATED BASIS)	TREATMENT FOR ALLOWED CLAIMS/PROJECTED RECOVERY/STATUS/VOTING RIGHTS
A-1	First Lien Lender Claims	\$325,947,566	On the Effective Date or such other date as set forth herein, each of the First Lien Lenders (or its Permitted Nominee) shall receive on account of its Claims, (w) its pro rata share of \$1.5 million in
		Deficiency Claim: \$231,649,680	

AKIN GUMP STRAUSS HAUER &amp; FELD LLP

One Bryant Park

New York, New York 10036

Tel: 212.872.1000 Facsimile: 212.872.1002 / akingump.com

CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS (CONSOLIDATED BASIS)	TREATMENT FOR ALLOWED CLAIMS/PROJECTED RECOVERY/STATUS/VOTING RIGHTS
			Cash, (x) its pro rata share of 100% of the New First Lien Notes, (y) its pro rata share of 100% of the Newco Equity Interests (subject to dilution for any Newco Equity Interests issued pursuant to a Management and Director Equity Incentive Plan); and (z) its pro rata share of the Litigation Trust Interests allocable to the Holders of the First Lien Lender Claims. The \$1.5 million payment to the First Lien Lenders shall be allocated and deemed paid to the First Lien Lenders in accordance with Article VII.F. of the Plan.
			<u>Projected Recovery:</u> 28.9% <u>Status:</u> Impaired <u>Voting:</u> Entitled to Vote
A-2	Second Lien Lender Claims	Principal Amount: \$70,665,402.38  Interest (as of 3/31/09): \$2,182,955.27  Interest (as of 4/1/09): \$2,202,944.34  Deficiency Claim: \$70,800,000	On the Effective Date, only if the Class of Second Lien Lender Claims votes in favor of the Plan, each of the Second Lien Lenders (or its Permitted Nominee) shall receive (x) its pro rata share of 50% of the net proceeds of the Stanley Engineering Litigation; and (y) its pro rata share of the Litigation Trust Interests allocable to the Holders of the Second Lien Lender Claims on account of its deficiency claims, without a reduction on account of the reasonable fees and expenses of Ropes & Gray LLP and local counsel for the Second Lien Agent, subject to an aggregate cap of \$500,000. If the Class of Second Lien Lender Claims votes against the Plan, each of the Second Lien Lenders shall receive its pro rata share of the Litigation Trust Interests allocable to the Holders of the Second Lien Lender Claims on account of its deficiency claims, subject to payment of the reasonable fees and expenses of Ropes & Gray LLP and local counsel for the Second Lien Agent.
			<u>Projected Recovery:</u> 2.8%% <u>Status:</u> Impaired <u>Voting:</u> Entitled to Vote
A-3	Other Secured Claims	\$2.3 million	To the extent not satisfied by the Debtors, pursuant to Bankruptcy Court order, in the ordinary course of business prior to the Effective Date, at the option of the Reorganized Debtors on or after the Effective Date (i) an Allowed Other Secured Claim shall be Reinstated and rendered Unimpaired in accordance with section 1124(2) of the Bankruptcy Code, (ii) a Holder of an Allowed Other Secured Claim shall receive Cash in an amount equal to such Allowed

AKIN GUMP STRAUSS HAUER &amp; FELD LLP

One Bryant Park

New York, New York 10036

Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](mailto:akingump.com)

CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS (CONSOLIDATED BASIS)	TREATMENT FOR ALLOWED CLAIMS/PROJECTED RECOVERY/STATUS/VOTING RIGHTS
			Other Secured Claim, including any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the later of the Effective Date and the date such Other Secured Claim becomes an Allowed Other Secured Claim, or as soon thereafter as is practicable, (iii) a Holder of an Allowed Other Secured Claim shall receive the Collateral securing both its Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (iv) a Holder of an Allowed Other Secured Claim shall receive such treatment as to which such Holder and the Reorganized Debtors or the Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent), otherwise agree.
			<u>Projected Recovery:</u> 100% <u>Status:</u> Unimpaired <u>Voting:</u> Deemed to Accept
B	Priority Non-Tax Claims	\$0	Each Holder of an Allowed Priority Non-Tax Claim shall receive Cash in an amount equal to such Allowed Priority Non-Tax Claim on the later of the Effective Date and the date such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, or as soon thereafter as is practicable, unless the Holder of an Allowed Priority Non-Tax Claim and the Reorganized Debtors or the Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent), otherwise agree.
			<u>Projected Recovery:</u> N/A <u>Status:</u> Unimpaired <u>Voting:</u> Deemed to Accept
C-1	General Unsecured Claims	Estimated asserted amount \$15 million +	On the Effective Date, each Holder of an Allowed General Unsecured Claim (including any Allowed Rhodes Entities Claims) shall receive its pro rata share of the Litigation Trust Interests allocable to the Holders of General Unsecured Claims on account of its Allowed Claim.
			<u>Projected Recovery:</u> less than 1% <u>Status:</u> Impaired <u>Voting:</u> Entitled to Vote
C-2	Subordinated	\$0	Claims subordinated under applicable law (including

AKIN GUMP STRAUSS HAUER & FELD LLP  
 One Bryant Park  
 New York, New York 10036  
 Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

CLASS NO.	DESCRIPTION	ESTIMATED AMOUNT OR VALUE OF CLAIMS (CONSOLIDATED BASIS)	TREATMENT FOR ALLOWED CLAIMS/PROJECTED RECOVERY/STATUS/VOTING RIGHTS
	Claims		any Rhodes Entities Claims that are subordinated) shall not receive any recovery on account of their Claims.  <u>Projected Recovery:</u> N/A <u>Status:</u> Impaired <u>Voting:</u> Deemed to Reject
D	Old Equity Interests		Each holder of an Old Equity Interest shall not be entitled to, and shall not receive or retain any property or interest in property on account of such Old Equity Interest.  <u>Projected Recovery:</u> 0% <u>Status:</u> Impaired <u>Voting:</u> Deemed to Reject
E	Intercompany Claims	\$500,000,000	At the election of the Reorganized Debtors, Intercompany Claims will be (i) reinstated, in full or in part, (ii) resolved through set-off, distribution, or contribution, in full or in part, or (iii) cancelled and discharged, in full or in part, in which case such discharged and satisfied portion shall be eliminated and the Holders thereof shall not be entitled to, and shall not receive or retain, any property or interest in property on account of such portion under the Plan.  <u>Projected Recovery:</u> 0% <u>Status:</u> Impaired <u>Voting:</u> Deemed to Reject

E. Claims Estimates

Upon information and belief, as of September 18, 2009, the Claims and Solicitation Agent had received approximately 461 Proofs of Claim and the total amount of Claims Filed against one or more of the Debtors was over \$12.7 billion, of which \$12 billion are duplicate Claims that will be automatically deemed to be eliminated upon the Effective Date. Additionally, the First Lien Steering Committee believes that many of the Filed Proofs of Claim are invalid, untimely, and/or overstated. Therefore, the Debtors, the Reorganized Debtors and/or the First Lien Steering Committee will object to such Claims.

The First Lien Steering Committee estimates that, at the conclusion of the Claims objection, reconciliation and resolution process, the aggregate amount of Claims will be as set forth on the chart in Article I.D.1.



These estimates are approximate and based upon numerous assumptions and represent significant reductions in the aggregate face amount of Claims Filed. There is no guarantee that the ultimate amount of each category of Claims will conform to the estimates stated herein, and the majority of Claims underlying such estimates are subject to challenge. A number of Claims have been asserted in unliquidated amounts. The First Lien Steering Committee believes that certain Claims are without merit, and the Debtors, the Reorganized Debtors and/or the First Lien Steering Committee will object to all such Claims. There can be no assurance, however, that Claim objections will achieve the significant reductions in Claims set forth above. Moreover, additional Claims may be Filed or identified during the Claims objection, reconciliation and resolution process that may materially affect the foregoing estimates.

F. Certain Factors to Be Considered Prior to Voting

Holders of Claims entitled to vote on the Plan should carefully consider the risks set forth in ARTICLE VI herein prior to accepting or rejecting the Plan.

G. Voting and Confirmation

The Classes entitled to vote will have accepted the Plan if (1) the Holders of at least two thirds in dollar amount of the Allowed Claims actually voting in each such Class, as applicable, have voted to accept the Plan and (2) the Holders of more than one half in number of the Allowed Claims actually voting in each such Class, as applicable, have voted to accept the Plan. Assuming the requisite acceptances are obtained, the First Lien Steering Committee intends to seek Confirmation of the Plan at the Confirmation Hearing scheduled to commence on [December 17], 2009 at [9:30 a.m.] prevailing Pacific Time, before the Bankruptcy Court. Section 1129(a)(10) of the Bankruptcy Code will be satisfied for purposes of Confirmation by acceptance of the Plan by at least one Class of Claims that is Impaired under the Plan.

THE FIRST LIEN STEERING COMMITTEE WILL SEEK CONFIRMATION OF THE PLAN UNDER SECTION 1129(B) OF THE BANKRUPTCY CODE WITH RESPECT TO ANY IMPAIRED CLASSES PRESUMED TO REJECT THE PLAN, AND THE FIRST LIEN STEERING COMMITTEE RESERVES THE RIGHT TO DO SO WITH RESPECT TO ANY OTHER REJECTING CLASS OR TO MODIFY THE PLAN.

The Bankruptcy Court has established [October 30], 2009 (the "Record Date"), as the date for determining which Holders of Claims are eligible to vote on the Plan. Ballots, along with this Disclosure Statement, the Plan and the Solicitation Procedures Order, will be mailed to all registered Holders of Claims as of the Record Date that are entitled to vote. A return envelope will be included with Ballots, as appropriate.

The Claims and Solicitation Agent will answer questions regarding the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, provide additional copies of all materials and oversee the voting tabulation. The Claims and Solicitation Agent will also process and tabulate Ballots for each Class entitled to vote to accept or reject the Plan. The address for the Claims and Solicitation Agent is:

AKIN GUMP STRAUSS HAUER & FELD LLP  
One Bryant Park  
New York, New York 10036  
Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

Omni Management Group  
Attn: Rhodes Homes Claims Agent  
16501 Ventura Boulevard, Suite 440  
Encino, CA 91436

Or if by email to [scott@omnimgt.com](mailto:scott@omnimgt.com) or by fax to 818-783-2737. If you have any questions on voting procedures, please call the Claims and Solicitation Agent at the following toll free number: (818) 906-8300.

TO BE COUNTED, BALLOTS (OR MASTER BALLOTS OF THE RESPECTIVE NOMINEE HOLDER, IF APPLICABLE) INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED BY THE CLAIMS AND SOLICITATION AGENT NO LATER THAN 4:00 P.M. PREVAILING PACIFIC TIME ON [DECEMBER 3], 2009 (THE "VOTING DEADLINE"). ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE SHALL NOT BE COUNTED.

THE FIRST LIEN STEERING COMMITTEE BELIEVES THAT THE PLAN IS IN THE BEST INTEREST OF ALL CREDITORS. THE FIRST LIEN STEERING COMMITTEE RECOMMENDS THAT ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS WHOSE VOTES ARE BEING SOLICITED SUBMIT BALLOTS TO ACCEPT THE PLAN.

H. Consummation of the Plan

It will be a condition to Confirmation of the Plan that all provisions, terms, and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article X of the Plan. Following Confirmation, the Plan will be consummated on the Effective Date, which will be no earlier than the eleventh day following entry of an order, in form and substance acceptable to the First Lien Steering Committee, by the Bankruptcy Court confirming the Plan and satisfaction of all conditions to Confirmation and the Effective Date having been satisfied or waived in accordance with the terms of the Plan.

## ARTICLE II. BACKGROUND<sup>2</sup>

### A. Description of the Debtors' Business Operations

#### 1. Organizational Structure

The Debtors' organizational chart is attached hereto as Exhibit B. In addition to the Debtor entities below, the Debtors are affiliated with several other companies that are not Debtors in these Chapter 11 Cases.

Rhodes Ranch GP is the primary holder of land associated with the Rhodes Ranch master-planned community and also owns some commercial properties outside of the Rhodes Ranch master-planned community. The Rhodes Ranch master-planned community consists of several developments, including developments built by non-Debtor affiliated developers. Rhodes Design and Development Corp. holds the Debtors' contractor's license in Nevada along with holding some land. Previously, Rhodes Ranch Golf and Country Club was the owner and operator of the golf course and club house in the Rhodes Ranch development, but on December 22, 2008, as required by the First Lien Credit Agreement, its assets were sold to non-Debtor Rhodes Ranch Golf, Inc.

The Rhodes Companies, LLC is a real estate development holding company.

The following Debtors hold parcels of land associated with the Tuscany development: Rhodes Design and Development; Tuscany Acquisitions, LLC; Tuscany Acquisitions II, LLC; Tuscany Acquisitions III, LLC; and Tuscany Acquisitions IV, LLC. Tuscany Golf Country Club, LLC owns and operates the golf club located at the Tuscany development.

The following Debtors own land in Arizona: Rhodes Homes Arizona, LLC; Rhodes Arizona Properties, LLC; and Elkhorn Investments. Rhodes Homes Arizona, LLC also holds the Debtors' Arizona contractor's license.

Heritage Land Company, LLC is the land management company for its subsidiaries and does not hold any real estate directly. The following Debtors are subsidiaries of Heritage Land Company, LLC and hold various parcels of land primarily located in Nevada: Tick, LP; Glynda, LP; Chalkline, LP; Batcave, LP; Jackknife, LP; Wallboard, LP; and Overflow LP.

The Debtors are also involved in land acquisition, development, and some utility and design work. Exterior and interior design is provided by Rhodes Design & Development Corporation. Rhodes Realty, Inc. is the Debtor that provides sales and marketing services for the Debtors. C & J Holdings, Inc. is the homeowners association management company for Rhodes Ranch, Tuscany, and three other smaller communities.

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<sup>2</sup> ARTICLE II is based primarily on representations made by the Debtors.

1 Pinnacle Grading, LLC provides grading and excavation services to the Debtors.  
 2 Previously, the following Debtors also provided specific services to the Debtors, but have  
 3 ceased operations: Bravo Inc.; Gung-Ho Concrete, LLC; Geronimo Plumbing, LLC;  
 4 Arapahoe Cleaning, LLC; Apache Framing, LLC; Six Feathers Holding, LLC; and Tribes  
 Holding LLC.

5 Elkhorn Investments, Inc. is a holding company for Elkhorn Partners, LP. Elkhorn  
 6 Partners, LP is a limited partnership that was formed for the construction and sale of several  
 communities in Northwest Las Vegas. As of the Petition Date, only one home remained  
 unsold.

## 7 2. History and Projects

8 The Debtors are engaged primarily in the business of detached home building and  
 9 sales in Nevada and Arizona. Collectively, the Debtors developed 40 communities since their  
 10 founding in 1988, generating over \$2.4 billion in total revenues. The Debtors have built more  
 11 than 6,000 homes in the Las Vegas Valley during the past two decades. In 2008, the Debtors  
 sold 390 homes, generating revenue of \$118.3 million, or \$54.6 million in gross profit.

12 Currently, the Debtors have two signature master planned communities under  
 13 development, Rhodes Ranch and Tuscany Residential Village. Both communities are  
 14 recognized for their accessible location to employment centers and the Las Vegas Strip, for  
 15 their community amenities, country club lifestyle, and for the quality and value of home  
 design and construction.

16 Rhodes Ranch is located in southwestern Las Vegas and opened in 1997. It has a  
 17 gated entry and 24-hour security detail with patrols. The development is built around a Ted  
 18 Robinson-designed 18-hole championship golf course. The development features a multi-  
 19 million dollar community center with swimming pool, gymnasium, multiple basketball courts,  
 fitness center, and card/club rooms. The community also has a community park and sports  
 complex. There are 314 available finished lots remaining to be sold as of March 31, 2009,  
 and approximately 1,993 lots to be developed.

20 Tuscany Residential Village is located in southeast Las Vegas and opened in 2005.  
 21 The development is also built around a Ted-Robinson designed 18-hole championship golf  
 22 course. It has gated entry and 24-hour security detail (with patrols), an existing 35,000 square  
 23 foot community center similar to Rhodes Ranch, and a planned Tuscan-themed retail center.  
 As of March 31, 2009, Tuscany had 350 finished lots remaining to be sold and 559 partially  
 developed lots.

24 Spanish Hills is a high-end development located in southwest Las Vegas. The  
 25 community is built on over 100 acres and features many custom homes in excess of 5,400  
 26 square feet of living space. As of March 31, 2009, it had 2 partially developed single family  
 estate lots and 2 finished lots remaining to be sold. It also had 10 acres of undeveloped land.

27 The Debtors homebuilding operations in Arizona ("Arizona") will be transferred to the  
 28 Rhodes Entities on the Effective Date pursuant to the Plan. Arizona consists of all of the real  
 and personal property of three of the Debtors: Rhodes Homes Arizona Properties, LLC,

Rhodes Homes Arizona, LLC, and Elkhorn Investments, Inc. Included within the Arizona Assets is Pravada, which is a Rhodes Homes development located in Mohave County (vicinity of Kingman, Arizona) on approximately 1,312 acres, which has 3,591 partially developed lots. Also included in Arizona, which is located within and around Pravada, are 4 model homes, 4 standing inventory homes, and 327 acres of land. The full list of Arizona Assets being transferred to the Rhodes Entities is set forth on Attachment D to the Mediation Term Sheet. The Arizona Assets do not include any assets owned by Pinnacle Grading located in Arizona, except for Pinnacle Grading office equipment, furniture, computers located in Arizona, which is set forth on Attachment D to the Mediation Term Sheet.

The Debtors own a number of additional lots and commercial-zoned properties in various stages of development in Nevada and Arizona. As of the first quarter of 2009, development on all projects except Rhodes Ranch and Tuscany has ceased pending improvement in the real estate market.

### 3. Principal Debt and Capital Structure

The Debtors are party to a First Lien Credit Agreement, pursuant to which there was approximately \$302 million in principal amount outstanding as of the Petition Date. The First Lien Steering Committee is comprised of certain lenders under the Debtors' First Lien Credit Agreement that hold, in the aggregate, approximately 60% of the outstanding first lien debt.<sup>3</sup> Three of the Debtors are primary obligors under the First Lien Credit Agreement. The remainder of the Debtors executed guarantees under the same facility. The First Lien Credit Agreement is secured by a blanket first lien on substantially all of the Debtors' property. The Debtors are also party to a swap transaction, pursuant to which there was approximately \$20.2 million outstanding on the Petition Date. Obligations outstanding under the swap transaction are equal in priority with obligations outstanding under the First Lien Credit Agreement.

In addition, the Debtors are party to a Second Lien Credit Agreement, pursuant to which there was approximately \$70.7 million in principal amount outstanding as of the Petition Date. The Second Lien Lenders are subject to the terms of an intercreditor agreement that, among other things, prohibits the Second Lien Lenders from receiving a recovery from the collateral securing the first lien and second lien debt unless the First Lien Lenders are repaid in full.

The Debtors are also obligated to approximately nine equipment lenders who hold purchase money security interests in various office equipment and equipment used in the Debtors' operations. As of the Petition Date, the Debtors estimate that they are obligated to these equipment lenders in the approximate amount of \$2.5 million.

In the ordinary course of business, the Debtors are required to post bonds, either on an unsecured or partially secured basis backed by collateral, as support for the Debtors'

<sup>3</sup> The members of the First Lien Steering Committee are Credit Suisse Asset Management, Candlewood Special Situations Master Fund, Credit Suisse Loan Funding LLC, CypressTree Investment Management LLP, General Electric Capital Corporation, Highland Capital Management, L.P., and Sorin Capital Management.



1 completion of certain performance and/or payment obligations for the benefit of various third  
 2 party beneficiaries, generally governmental entities, agencies, jurisdictions or homeowners  
 3 associations with which they conduct business. The Debtors rely on bonding companies to  
 4 post the bonds and have issued indemnities in favor of the bonding companies in the event  
 that the bonds come due. The Debtors estimate that they currently have approximately \$31  
 million in outstanding bonds, none of which amounts have been called.

5 4. The Rhodes Entities Claims

6 The Debtors are affiliated with several non-Debtor entities that are not obligors or  
 7 guarantors under the First Lien Credit Agreement or the Second Lien Credit Agreement. The  
 8 non-Debtor entity affiliates, collectively the "Rhodes Entities" are directly or indirectly owned  
 9 by James M. Rhodes, the founder and President of the Debtors. The Rhodes Entities have  
 10 alleged pre-petition Claims on an aggregate basis against the Debtors for approximately  
 \$10.598 million consisting primarily of tax payments allegedly made by the Rhodes Entities  
 on behalf of the Debtors. The First Lien Steering Committee is in the process of analyzing the  
 Rhodes Entities Claims and any and all claims that the Debtors' estates may hold against the  
 Rhodes Entities.

12 5. Management of the Debtors

13 James Rhodes leads the management team of the Debtors. Upon the Effective Date, it  
 14 is contemplated that James Rhodes will not have a management role with the Reorganized  
 Debtors.

15 B. Pending Significant Litigation

16 Rhodes Homes Arizona, LLC filed suit against Stanley Consultants, Inc. ("Stanley"), an  
 17 Iowa corporation, in August, 2006 in the Superior Court of Arizona, Maricopa County. An  
 18 amended complaint was filed on October, 23 2007. The amended complaint seeks recovery  
 19 against Stanley for breach of contract, bad faith, declaratory relief, fraud, punitive damages, and  
 20 professional negligence arising out of approximately \$7 million worth of charges for work that  
 was substantially unusable. Damages have been itemized to counsel for Stanley in the amount  
 of \$25,140,595.96, which amount does not include exemplary damages. Stanley has filed a  
 21 counterclaim to recover approximately \$2 million in unpaid charges. A significant portion of  
 discovery has been completed in connection with the lawsuit. Upon information and belief, no  
 22 trial date has been set.

23 Stanley Filed Proofs of Claim against Rhodes Homes Arizona, LLC, Rhodes Design and  
 24 Development Corporation and Rhodes Ranch General Partnership asserting Claims in the total  
 aggregate amount of \$4,609,249.00 on account of prepetition services allegedly rendered  
 25 pursuant to agreements entered into with (i) Rhodes Homes Arizona, LLC and (ii) Rhodes  
 Design and Development Corporation and Rhodes Ranch General Partnership. The Reorganized  
 26 Debtors will evaluate and, if appropriate, file objections to such Claims prior to the Claims  
 Objection Deadline. The Reorganized Debtors also intend to pursue the Stanley Engineering  
 27 Litigation post-emergence.



**ARTICLE III.<sup>4</sup>**  
**THE CHAPTER 11 CASES**

The following is a general summary of the Chapter 11 Cases, including the events leading up to the chapter 11 filings, the stabilization of the Debtors' operations following the chapter 11 filings, certain administrative matters addressed during the Chapter 11 Cases and the Debtors' restructuring initiatives since the chapter 11 filings.

**A. Events Leading to the Chapter 11 Cases**

At the end of the fourth quarter of 2008, sales in the Las Vegas market of new, detached homes were down 93% (to 522 net sales) from the peak (7,731 quarterly net sales) that occurred in the second quarter of 2005. The median base price for a detached single family home dropped 39% from the peak achieved in the fourth quarter of 2005.

Although the Debtors had made cost reductions in general overhead and other areas, including employee layoffs, many factors, including the severe downturn of the Las Vegas market, significant supply overhang, and general economic malaise combined to create an environment where the Debtors were unable to meet their March 2009 debt and amortization payments. The First Lien Steering Committee was formed in early March 2009 to negotiate the terms of a forbearance agreement and consensual restructuring with the Debtors after it became apparent that the Debtors would not be able to make their regularly scheduled interest and amortization payments on the first lien debt.

On March 31, 2009, an interest payment in the amount of approximately \$9 million and a principal payment in the amount of \$10.75 million was due and owing on the First Lien Credit Agreement and an interest payment in the amount of approximately \$2.4 million was due and owing on the Second Lien Credit Agreement. Despite extended and intensive negotiations between the First Lien Lenders and the Debtors, when no agreement was reached by March 31, 2009, the Debtors commenced these Chapter 11 Cases on March 31, 2009 and April 1, 2009 to avail themselves of the protections of the Bankruptcy Code.

**B. Initiation of the Chapter 11 Cases**

On either March 31, 2009 or April 1, 2009, each of the Debtors Filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On April 13, 2009, the Bankruptcy Court entered an order jointly administering the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). No trustee or examiner has been appointed in the Chapter 11 Cases.

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<sup>4</sup> ARTICLE III includes information that is based on representations made by the Debtors.

1 C. Stabilization of Operations

2 After commencing the Chapter 11 Cases, the Debtors sought and obtained a number of  
3 orders from the Bankruptcy Court to minimize disruption to their operations and facilitate the  
4 administration of the Chapter 11 Cases. Several of these orders are briefly summarized below.

5 1. Cash Collateral Motion

6 The Debtors Filed a motion (the "Cash Collateral Motion") seeking entry of interim  
7 and final orders (i) authorizing the Debtors to use cash collateral, (ii) granting adequate  
8 protection to the Debtors' prepetition secured creditors, and (iii) scheduling a final hearing on  
9 the Cash Collateral Motion [Heritage Docket No. 15]. Subsequent to the filing of the Cash  
10 Collateral Motion, the Court entered a series of stipulated orders authorizing the Debtors to  
11 use cash collateral with the consent of the First Lien Steering Committee. On April 10, 2009,  
12 the Court entered a stipulated interim order (the "First Stipulated Cash Collateral Order")  
13 authorizing the Debtors to use cash collateral through April 17, 2009 [Heritage Docket No.  
14 125]. On April 17, 2009, the Court entered a second stipulated interim order (the "Second  
15 Stipulated Cash Collateral Order"), which extended the Debtors' authorization to use cash  
16 collateral through April 28, 2009 [Rhodes Docket No. 73] on similar terms to the First  
17 Stipulated Cash Collateral Order. On April 30, 2009, the Court entered a final stipulated order  
18 authorizing the Debtors to use cash collateral through June 28, 2009 [Rhodes Docket No.  
19 126]. In response to further requests for extension of the Debtors' authority to use cash  
20 collateral, the First Lien Steering Committee has consented to periodic continuances of the  
21 Debtors' use of cash collateral. A copy of the current cash collateral budget is attached hereto  
22 as Exhibit C.

23 2. Cash Management Motion

24 The Debtors Filed a motion (the "Cash Management Motion") seeking entry of interim  
25 and final orders (i) authorizing the Debtors to continue to use their existing, centralized cash  
26 management system, bank accounts and business forms; (ii) granting administrative expense  
27 priority status to intercompany claims arising on and after the Petition Date; (iii) waiving the  
28 investment and deposit requirements under section 345 of the Bankruptcy Code; and (iv)  
granting related relief [Rhodes Docket No. 13]. On April 17, 2009, the Bankruptcy Court  
granted the Cash Management Motion on an interim basis with certain modifications [Rhodes  
Docket No. 78]. On April 30, 2009, the Bankruptcy Court entered a final order granting the  
Cash Management Motion on a final basis [Rhodes Docket No. 123].

3. Home Sale Motion

The Debtors Filed a motion (the "Home Sale Motion") for authority to, among other  
things, (i) continue the construction, sale and closing of homes to customers in the ordinary  
course of business, (ii) honor certain prepetition contract obligations to homebuyers,  
including, where appropriate in the Debtors' business judgment and not inconsistent with past  
business practices, to refund deposits or provide other customer incentives, (iii) provide that  
the sale of homes to the Debtors' customers shall be free and clear of all liens, claims,  
encumbrances and other interests, (iv) pay claims secured by liens out of the proceeds of

home sales, (v) establish procedures for resolving disputed lien claims, (vi) proceed immediately with the sale of homes and establishment of the lien procedures, and (vii) permit financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing [Rhodes Docket No. 14]. As set forth in the Home Sale Motion, the Debtors' ability to, among other things, satisfy their contractual obligations to their customers and continue to contract for and complete the construction and sale of homes, free and clear of liens, is critical to the Debtors' operations. On April 10, 2009 the Bankruptcy Court entered an interim order granting the Home Sale Motion [Rhodes Docket No. 20], and subsequently entered a final order, with certain modifications, on April 17, 2009 (the "Final Home Sale Order") [Rhodes Docket No. 77]. Among other things, the Final Home Sale Order established that the construction and sale of homes was required to be consistent with any cash collateral orders and provided the Debtors' prepetition lenders with rights to receive certain information and object to certain lien payments.

#### 4. Customer Programs Motion

The Debtors Filed a motion (the "Customer Programs Motion") seeking entry of an order authorizing the Debtors to honor certain prepetition obligations to customers and continue customer practices and programs (the "Customer Practices and Programs") in the ordinary course of business [Rhodes Docket No. 12]. The Customer Practices and Programs included, among other things, (i) a one year limited warranty that was offered to all homebuyers, (ii) customer sale incentives, (iii) payment of homeowner association dues, and (iv) certain programs related to the Tuscan golf pro shop. On April 17, 2009, the Bankruptcy Court entered an order approving the Customer Programs Motion [Rhodes Docket No. 75].

#### 5. Utilities Motion

To comply with the requirements of section 366 of the Bankruptcy Code, the Debtors Filed a motion (the "Utilities Motion") seeking an order authorizing them to provide, within 20 days of the Petition Date, an adequate assurance deposit equal to one-half of the Debtors' estimated monthly charges, subject to certain provisions as set forth in the motion [Rhodes Docket No. 11]. If any of the utility service providers believed that additional assurance of payment for services was required, the Utilities Motion authorized such utility service provider to request such additional adequate assurance. On April 30, 2009, the Bankruptcy Court granted the Utilities Motion on an interim basis with certain modifications [Rhodes Docket No. 122]. On May 18, 2009, the Bankruptcy Court entered a final order granting the Utilities Motion [Rhodes Docket No. 181].

#### 6. Employee Wages and Benefits Motion

As of the Petition Date, the Debtors' workforce consisted of approximately 124 employees. Given the critical functions performed by the Debtors' employees and their importance to the Debtors' businesses and efforts to reorganize, the Debtors Filed a motion (the "Employee Wages and Benefits Motion") seeking entry of an order authorizing them, in accordance with their ordinary course policies and practices and in the Debtors' discretion, to (i) pay and/or honor prepetition wages, salaries, employee benefits, and other compensation or reimbursements, (ii) remit withholding obligations, (iii) maintain employee compensation and

benefits programs and pay related administrative obligations, and (iv) have applicable banks and other financial institutions receive, process, honor, and pay certain checks presented for payment and honor certain fund transfer requests [Rhodes Docket No. 10]. An interim order approving the Employee Wages and Benefits Motion was entered on April 10, 2009 [Rhodes Docket No. 19], and a final order approving the Employee Wages and Benefits Motion was entered on April 17, 2009 [Rhodes Docket No. 74], which required that any compensation for postpetition wages to be paid to Rhodes or his relatives be made by separate motion for insider compensation (the "Wages Orders").

#### 7. Sales and Use Tax Motion

The Debtors Filed a motion (the "Sales and Use Tax Motion") seeking authority to pay certain prepetition sales and use taxes. In connection with the normal operation of their homebuilding business, the Debtors incur sales and use taxes, which are not property of the Debtors' estates and must be paid in order for the Debtors to avoid any attempt by authorities to suspend the Debtors' businesses. On May 18, 2009, the Bankruptcy Court entered an order granting the Sales and Use Tax Motion with certain modifications [Rhodes Docket No. 179].

#### 8. Insider Compensation Motion

As required by the Wages Orders, the Debtors Filed a motion for an order authorizing the Debtors to pay the salary of the Debtors' president, James M. Rhodes, through June 26, 2009, the time period of the Debtors' 13 week budget, or any such further time period as authorized by the Court or agreed upon by the First Lien Lenders pursuant to any cash collateral order entered in these cases [Rhodes Docket Number 94]. The United States Trustee filed an objection, which was resolved in the order approving the motion on July 21, 2009.

#### 9. Appointment of Claims and Noticing Agent

To relieve the Clerk's Office of the Bankruptcy Court of the significant burden as a result of the potential for having approximately 10,000 creditors in these cases, the Debtors Filed an application (the "Claims and Noticing Agent Application") seeking entry of an order appointing Omni Management Group, LLC ("Omni") as the Debtors' Claims and Solicitation Agent to, among other things: (i) prepare and serve notices required in the Debtors' Chapter 11 Cases, including notice of the commencement of these cases and the initial meeting of creditors under section 341 of the Bankruptcy Code; (ii) maintain the official Claims Register; and (iii) mail Ballots in connection with any vote to accept or reject a plan or plans of reorganization proposed in these cases [Heritage Docket No. 63]. The Bankruptcy Court entered an order approving the Claims and Noticing Agent Application on April 8, 2009 [Heritage Docket No. 111]. On April 10, 2009, the Bankruptcy Court entered an amended order with a notation that Omni shall maintain a separate Claims Register for each Debtor and shall abide by the Guidelines for Claims Agents used in the District of Nevada [Heritage Docket No. 123]. Among other services, Omni maintains a website with case information and copies of all pleadings free of charge in these Chapter 11 Cases. See [www.omnimgt.com/rhodes](http://www.omnimgt.com/rhodes).

10. Retention of Debtors' Professionals

Throughout the Chapter 11 Cases, the Debtors retained certain Professionals to assist them in carrying out their duties as debtors in possession and to otherwise represent their interests in the Chapter 11 Cases. These Professionals included: (a) Pachulski Stang Ziehl & Jones LLP, as general bankruptcy counsel; (b) Larson & Stephens, LLC, as local counsel; (c) Acceleron Group, LLC, as valuation advisor; and (d) Sullivan Group Real Estate Advisors, as market research consultant. The Bankruptcy Court entered an order approving certain procedures for the interim compensation and reimbursement of retained Professionals in the Chapter 11 Cases.

11. Ordinary Course Professionals

The Debtors desired to continue to employ certain professionals such as attorneys and accountants not involved in the administration of the Debtors' cases (the "Ordinary Course Professionals") for the same purposes as such services were provided prior to the Petition Date. Accordingly, pursuant to sections 105(a), 327, 328 and 330 of the Bankruptcy Code and Bankruptcy Rule 2014(a), the Debtors Filed a motion (the "OCP Motion") seeking entry of an order authorizing them to retain, employ, and pay Ordinary Course Professionals in the ordinary course of the Debtors' businesses, on the terms and conditions set forth in the OCP Motion, and subject to certain monthly payment caps [Rhodes Docket No. 141]. The Bankruptcy Court entered an order approving the OCP Motion on May 19, 2009 [Rhodes Docket No. 187].

D. Appointment of the Creditors' Committee

On May 26, 2009, the United States Trustee appointed the Creditors' Committee. The members of the Creditors' Committee are: G.C. Wallace, Inc., Interstate Plumbing & Air Conditioning, M&M Electric, Inc. and Southwest Iron Works, LLC. The Creditors' Committee retained the law firm of Parsons Behle & Latimer as counsel.

E. Claims Bar Dates

On April 30, 2009, each of the Debtors Filed their schedules of assets and liabilities and statement of financial affairs as amended from time to time (collectively, the "Schedules") with the Bankruptcy Court. Interested parties may review the Schedules at the office of the Clerk of the United States Bankruptcy Court for the District of Nevada, Southern Division, 300 Las Vegas Boulevard South, Las Vegas, NV 89101 or by visiting [www.omnimgt.com/rhodes](http://www.omnimgt.com/rhodes).

By notice dated March 31, 2009, the Court set the claims bar date for 90 days after the date first set for the meeting of creditors, or August 5, 2009 (the "Bar Date Notice") [Heritage Docket No. 3]. The Bar Date Notice was served on the Debtors' master mailing lists on April 17, 2009. Accordingly, the following Bar Dates have been established:

- (i) August 5, 2009 for all Holders of General Unsecured Claims against all Debtors;



(ii) September 28, 2009 for all Holders of Claims of Governmental Units for all Debtors except the following three Debtors: Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887);

(iii) September 29, 2009 for all Holders of Claims of Governmental Units for the following three Debtors: Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

On May 27, 2009, the Debtors Filed the Motion of Debtors for Entry of an Order Authorizing the Debtors to Publish Notice of the Bar Dates and Approving the Form of the Publication Notice Pursuant to FRBP 2002(l). The Bankruptcy Court entered an order (the "Bar Date Publication Order") granting the motion on July 9, 2009 [Rhodes Docket Number 305]. The Bar Date Publication Order authorized the Debtors to publish notice of the Bar Dates in the *Las Vegas Review-Journal*, the *Kingman Daily Miner* and such other local publications as the Debtors deemed appropriate within ten days of the entry of the Bar Date Publication Order.

The First Lien Steering Committee and the Debtors have been reviewing various Proofs of Claim and will continue to review and evaluate each Proof of Claim Filed prior to the applicable Bar Date to determine whether grounds exist to object to the allowance of such Claims. The First Lien Steering Committee believes that the Claims asserted against the Debtors will likely be resolved and/or reduced to aggregate amounts that approximate the estimates for Allowed Claims set forth herein. However, the actual aggregate amounts of the Allowed Claims in any Class may differ significantly from the First Lien Steering Committee's estimates thereof and any variance from such estimates may affect distributions in certain Classes.

#### F. Other Postpetition Events and Negotiations

##### 1. The Trustee Motion

On April 7, 2009, the First Lien Steering Committee moved for the appointment of a chapter 11 trustee (the "Trustee Motion"). The Trustee Motion was based, in part, on allegations of questionable and unlawful business dealings, and suspicions concerning the propriety of Mr. Rhodes' conduct as the Debtors' President as detailed in a report prepared by a nationally recognized firm retained by the First Lien Agent to conduct an investigation into the Debtors' business operations (the "Rhodes Report"). In light of the allegations contained in the Rhodes Report, and as a result of Mr. Rhodes' conduct during the prepetition negotiations, the First Lien Steering Committee did not believe that Mr. Rhodes had been acting in accordance with his fiduciary duties. Thus, the First Lien Steering Committee Filed the Trustee Motion.

The Rhodes Entities and the Debtors opposed the Trustee Motion and objected to the Rhodes Report as containing unsubstantiated allegations and hearsay. The Debtors provided extensive discovery and a deposition at the request of the First Lien Steering Committee.



1 Prior to the hearing on this matter, the First Lien Steering Committee took the Trustee Motion  
2 off calendar in light of the discovery produced and the progress the parties were making on  
3 negotiations over the plan of reorganization.

4 2. The Mediation Settlement

5 The negotiations for a plan of reorganization, which began prior to the Petition Date,  
6 continued in earnest during the Chapter 11 Cases until the negotiations reached a stalemate in  
7 June. In June, the First Lien Steering Committee objected to the Debtors' request to extend  
8 their exclusive period to file a plan of reorganization and continue use of cash collateral. The  
9 Debtors agreed to give up their exclusive right to file a plan of reorganization in exchange for  
10 an agreement by the parties to participate in non-binding plan mediation before a neutral third  
11 party mediator to attempt to work out a consensual plan. All parties did so agree to mediate  
12 and the mediation was held in Los Angeles on August 17, 24 and 25, 2009 before the  
13 Honorable Richard Neiter, United States Bankruptcy Court, Central District of California.  
14 During the mediation, the parties reached agreement in principle on a comprehensive  
15 settlement (the "Mediation Settlement").

16 a. The Terms of the Mediation Settlement

17 The terms of the Mediation Settlement are set forth on Exhibit 1 to the Plan (the  
18 "Mediation Term Sheet") and provide for, among other things, the following:

- 19 • The Rhodes Entities shall receive a full release for chapter 5 causes of action  
20 with respect to transfers made by the Debtors to the Rhodes Entities during the  
21 2 years prior to the Petition Date provided, that, such release shall only apply  
22 to transfers expressly set forth in the Debtors' statements of financial affairs as  
23 filed with the Bankruptcy Court as of August 1, 2009 or as set forth on the  
24 Mediation Term Sheet.
- 25 • To the extent permitted by applicable law, the Plan shall provide that, but for  
26 (i) the Rhodes Entities and their affiliates, (ii) insiders of any of the Rhodes  
27 Entities (except as to Thomas Robinson and Joseph Schramm who were also  
28 employees of the Debtors), (iii) relatives of James Rhodes, the Debtors' officers, employees (including Thomas Robinson and Joseph Schramm), and professionals, as of the Petition Date, and Paul Huygens shall receive a general release from the Debtors' estates.
- The Plan shall provide for one of the following: (i) those performance bonds guaranteed by the Rhodes Entities in favor of the Debtors to be replaced on a renewal date by new performance bonds or, in the alternative, (ii) subject to the Rhodes Entities being reasonably satisfied with the creditworthiness of the Reorganized Debtors, which shall be satisfied solely as of the Effective Date by the Court finding that the Plan is feasible, the existing performance bonds guaranteed by the Rhodes Entities and such guarantees to remain in place.

AKIN GUMP STRAUSS HAUER & FELD LLP  
 One Bryant Park  
 New York, New York 10036  
 Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

- The Rhodes Entities shall ensure that designees identified by the Reorganized Debtors shall replace the Rhodes Entities on any HOA boards that in any way are related to the Debtors, Reorganized Debtors or their businesses and declarant rights or the like shall be transferred to the Reorganized Debtors or their designee(s).
- The Rhodes Entities shall take commercially reasonable steps and/or enter into any agreements or similar documentation reasonably necessary to ensure the Reorganized Debtors' continued use of all of the Debtors' applicable professional licenses at no cost to the Rhodes Entities for a period of up to twelve months following the Effective Date.
- To the extent allowed, the Rhodes Entities' Claims shall be treated in the same class as and treated the same as General Unsecured Claims.
- The Heritage Equity Securities shall be purchased by Newco, as described in Article IV.E.6 herein and Article IV.F of the Plan.
- On the Effective Date, the applicable Rhodes Entities shall transfer their interests in the Rhodes Ranch Golf Course to the Reorganized Debtors, subject to any outstanding debt on the Rhodes Ranch Golf Course. The existing debt outstanding on the Rhodes Ranch Golf Course shall be refinanced on or before the Effective Date, for a period of no less than twelve (12) months from the Effective Date, on terms and conditions acceptable to Mr. Rhodes and the First Lien Steering Committee.
- The Rhodes Entities shall make a Cash payment to the Reorganized Debtors of \$3.5 million in Cash on the Effective Date.
- On the Effective Date, the Debtors shall (i) transfer Pravada and the other Arizona Assets to the Rhodes Entities free and clear of all liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and (ii) assume and assign to the Rhodes Entities (or their designee) all executory contracts and unexpired leases associated solely with the Arizona Assets at no cost to the Debtors or the Reorganized Debtors and all Cure costs associated therewith shall be borne by the Rhodes Entities.

For a more detailed discussion of terms of the Mediation Settlement, see Article IV.E. of the Disclosure Statement. The provisions of the Plan encompassing the terms of the Mediation Settlement shall, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Mediation Settlement, constitute a good faith compromise of all Claims, Interests, and controversies relating to the subject matter of the Mediation Settlement.

b. Approval of the Mediation Settlement under Bankruptcy Rule 9019

In order to determine whether a compromise may be approved under Bankruptcy Rule 9019, the Bankruptcy Court must consider four factors: (i) the probability of success of the litigation; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See, e.g., In re A&C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). A compromise may be approved even if all four of the factors do not favor the compromise so long as the factors weigh in favor of the compromise when taken as a whole. *See In re Pac. Gas and Elec. Co.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004). In addition, a compromise does not have to be the best compromise that could have possibly been obtained but, instead, must only fall within a reasonable range of possible outcomes. *In re WCI Cable, Inc.*, 282 B.R. 457, 473-74 (Bankr. D. Or. 2002).

Based on the foregoing, the First Lien Steering Committee believes that the compromise embodied in the Plan and the Mediation Settlement is fair and equitable. Specifically, the Mediation Settlement represents a global resolution of, among other things, potential preference actions held by the Debtors' estates relating to the transfer of funds to certain Rhodes Entities within the one year period prior to the Petition Date, issues related to operation of the Reorganized Debtors' businesses and ownership of the Rhodes Ranch Golf Course.

The First Lien Steering Committee estimates that the total amount of all payments made by the Debtors to the Rhodes Entities within the year prior to the Petition Date is in excess of \$9 million. With respect to the first factor articulated by the *A&C Properties* Court, litigation over the potential preference payments identified herein would have been contentious and hard fought. The Rhodes Entities would likely have asserted a number of defenses to the preference claims, including that such payments were received in the ordinary course of business. Moreover, based on the First Lien Steering Committee's review of all payments made to insiders within the one year period prior to the Petition Date as reflected in the Debtors' Schedules and Schedule B to the Mediation Settlement Term Sheet, and on subsequent conversations with Debtors' counsel, the First Lien Steering Committee believes that the Rhodes Entities may have had valid defenses to certain of these transfers. The Mediation Settlement also reflects a resolution of potential fraudulent conveyance actions held by the Estates against the Rhodes Entities. The First Lien Steering Committee believes that these claims would also have been heavily litigated in the absence of a settlement and, while the First Lien Steering Committee believes that it would have ultimately prevailed on certain of such claims, there can be no guarantee that a successful result would have been obtained for the Estates. In addition, the prosecution of both the fraudulent conveyance claims and the preference claims would have resulted in substantial expense for the Estates, while at the same time likely delaying the Debtors' emergence from chapter 11. Therefore, the First Lien Steering Committee believes that the third factor of the *A&C Properties* test also weighs in favor of the approval of the Mediation Settlement.<sup>5</sup>

<sup>5</sup> The second factor to be considered by the Bankruptcy Court in evaluating a settlement proposal is the difficulties, if any, to be encountered in the matter of collection. The First Lien Steering Committee has not

The fourth factor of the A&C Properties test requires the Bankruptcy Court to consider the paramount interest of creditors. The Creditors of the Estates will derive a material benefit from the approval of the Mediation Settlement because, among other things, the Mediation Settlement (i) contemplates a \$3.5 million cash payment from the Rhodes Entities to the Reorganized Debtors, which payment will be used to fund working capital needs and distributions contemplated by the Plan, (ii) provides for the transfer of the Arizona Assets, which were non-core assets to the Reorganized Debtors that likely would have required significant additional funding for development, to the Rhodes Entities, (iii) provides for the transfer of the Rhodes Ranch Golf Course, the maintenance and continued operation of which is paramount to maximizing the value of the Reorganized Debtors' assets, to the Reorganized Debtors, (iv) avoids the significant expense and time delay associated with litigating the claims released under the Plan, which would have yielded uncertain results, and (v) enables the Debtors to emerge from bankruptcy expeditiously and consensually, without any unnecessary eradication of value through a prolonged stay in chapter 11. In addition, all claims and causes of action against the Rhodes Entities that are not covered by the limited release provided for in the Mediation Settlement will be transferred to the Litigation Trust for the benefit of all Creditors, to be prosecuted and/or settled post-emergence.

In addition to the material benefits listed above, the First Lien Steering Committee believes that the Mediation Settlement will also ensure a smooth transition to new ownership under the Plan. The Mediation Settlement contemplates that stringent bond and licensing requirements will be maintained through the cooperation of the Rhodes Entities, thus allowing the Reorganized Debtors to continue operations without interruption upon emergence. The Mediation Settlement also contemplates that new Qualified Employees and HOA board representatives will be elected by the Reorganized Debtors to ensure a unified and organized post-Effective Date management team. On balance, the First Lien Steering Committee believes that the Estates and their Creditors will be obtaining value far in excess of the consideration to be given to the Rhodes Entities if the Mediation Settlement is approved. Given the range of issues involved, and the nature and character of the disputes between the First Lien Steering Committee, the Debtors and Rhodes, the First Lien Steering Committee believes that approval of the Mediation Settlement is appropriate. In addition, as set forth above, the Mediation Statement satisfies the fair and reasonable standards articulated by courts in this circuit. The entry of the Confirmation Order shall therefore constitute the Bankruptcy Court's approval of the compromise and settlement of the matters subject to the Mediation Settlement as well as a finding by the Bankruptcy Court that such compromise and settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable.

completed a detailed review of the financial information of each Rhodes Entity that may have been liable in connection with the Claims released under the Plan, and cannot therefore make a determination as to whether each such entity could have satisfied its obligations in connection with any judgment entered by the Bankruptcy Court but believes that the Rhodes Entities may not have been able to comply financially with the terms of judgments received in connection with successful litigation regarding the claims being released under the Plan.

**ARTICLE IV.  
SUMMARY OF THE PLAN**

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND MEANS FOR IMPLEMENTATION OF THE PLAN AND THE CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN (AS WELL AS THE EXHIBITS THERETO AND DEFINITIONS THEREIN).

THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN THE DOCUMENTS REFERRED TO IN THE PLAN. THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO IN THE PLAN, AND REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENT OF SUCH TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO IN THE PLAN.

THE PLAN ITSELF AND THE DOCUMENTS IN THE PLAN CONTROL THE ACTUAL TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN AND WILL, UPON THE OCCURRENCE OF THE EFFECTIVE DATE, BE BINDING UPON ALL HOLDERS OF CLAIMS AND INTERESTS, THE ESTATES, ALL PARTIES RECEIVING PROPERTY UNDER THE PLAN AND OTHER PARTIES IN INTEREST. IN THE EVENT OF ANY CONFLICT BETWEEN THE DISCLOSURE STATEMENT AND THE PLAN OR ANY OTHER OPERATIVE DOCUMENT, THE TERMS OF THE PLAN AND/OR SUCH OTHER OPERATIVE DOCUMENT SHALL CONTROL.

**A. Overview of Chapter 11**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor can reorganize or wind-down its business for the benefit of itself and holders of claims against and interests in the debtor. Chapter 11 also is designed to promote equality of treatment for similarly situated holders of claims against the debtor and similarly situated holders of interests in the debtor with respect to the distribution of the debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a chapter 11 plan is the principal objective of a chapter 11 case. A chapter 11 plan sets forth the means for satisfying claims against, and interests in, a debtor. Confirmation of a chapter 11 plan by a bankruptcy court makes the plan binding upon the debtor, any person or entity acquiring property under the plan and any holder of claims against



1 or interests in the debtor, whether or not such holder of claims or interests (1) is impaired  
 2 under or has accepted the plan or (2) receives or retains any property under the plan. Subject  
 3 to certain limited exceptions and other than as provided in the plan itself or the confirmation  
 4 order, a confirmation order discharges the debtor from any debt that arose prior to the date of  
 confirmation of the plan and substitutes therewith the obligations specified under the  
 confirmed plan.

5 A chapter 11 plan may specify that the legal, contractual and equitable rights of the  
 6 holders of claims or interests in certain classes are to remain unaltered by provisions of the  
 7 plan. Such classes are referred to as "unimpaired" and, because of such favorable treatment,  
 8 are deemed to accept the plan. Accordingly, the Debtors need not solicit votes from the  
 9 Holders of Claims or Interests in such Classes. A chapter 11 plan also may specify that certain  
 10 classes will not receive any distribution of property or retain any claim against a debtor. Such  
 classes are deemed not to accept the plan and, therefore, need not be solicited to vote to accept  
 or reject the plan. Any classes that are receiving a distribution of property under the plan but  
 are not "unimpaired" will be solicited to vote to accept or reject the plan.

11 Section 1123 of the Bankruptcy Code provides that a chapter 11 plan shall classify  
 12 claims against and interests in the debtor. In compliance therewith, the Plan divides Claims  
 13 and Interests into various Classes and sets forth the treatment for each Class. The Plan  
 14 Proponent is also required, as discussed above, under section 1122 of the Bankruptcy Code, to  
 15 classify Claims and Interests into Classes that contain Claims and Interests that are  
 16 substantially similar to the other Claims and Interests in such Classes. The First Lien Steering  
 17 Committee believes that the Plan has classified all Claims and Interests in compliance with  
 18 the provisions of section 1122 of the Bankruptcy Code, but it is possible that a Holder of a  
 19 Claim or Interest may challenge the classification of Claims and Interests and that the  
 20 Bankruptcy Court may find that a different classification is required for the Plan to be  
 21 confirmed. In such event, the First Lien Steering Committee intends, to the extent permitted  
 by the Bankruptcy Court and the Plan, to make such reasonable modifications of the  
 classifications under the Plan to permit Confirmation and to use the Plan acceptances received  
 in this solicitation for the purpose of obtaining the approval of the reconstituted Class or  
 Classes of which the accepting Holder is ultimately deemed to be a member. Any such  
 reclassification could adversely affect the Class in which such Holder was initially a member,  
 or any other Class under the Plan, by changing the composition of such Class and the vote  
 required of that Class for approval of the Plan.

## 22 B. Administrative and Priority Claims

23 In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims  
 24 and Priority Tax Claims have not been classified and thus are excluded from the Classes of  
 25 Claims set forth in Article III of the Plan.

### 26 1. Administrative Claims

27 Each Allowed Administrative Claim shall be paid in full, in Cash, (i) on the later of (a)  
 28 the Effective Date, (b) the date on which the Bankruptcy Court enters an order allowing such  
 Allowed Administrative Claim, or (c) the date on which the Reorganized Debtors or the



Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent) and the Holder of such Allowed Administrative Claim otherwise agree, and (ii) in such amounts as (a) are incurred in the ordinary course of business by the Debtors, (b) are Allowed by the Bankruptcy Court, (c) may be agreed upon between the Holder of such Allowed Administrative Claim and the Reorganized Debtors or the Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent), or (d) may otherwise be required under applicable law. Such Allowed Administrative Claims shall include costs incurred in the operation of the Debtors' businesses after the Petition Date, the allowed fees and expenses of Professionals retained by the Debtors and the Creditors' Committee and the fees due to the United States Trustee pursuant to 28 U.S.C. § 1930.

## 2. Priority Tax Claims

Allowed Priority Tax Claims shall be paid in full, in Cash, upon the later of (a) the Effective Date, (b) the date upon which there is a Final Order allowing such Claim as an Allowed Priority Tax Claim, (c) the date that such Allowed Priority Tax Claim would have been due if the Chapter 11 Cases had not been commenced, or (d) upon such other terms as may be agreed to between the Reorganized Debtors or the Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent), and any Holder of an Allowed Priority Tax Claim; provided, however, that the Reorganized Debtors or Debtors, with the consent of the First Lien Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent), in lieu of payment in full of Allowed Priority Tax Claims on the Effective Date, may make Cash payments respecting Allowed Priority Tax Claims deferred to the extent permitted by Section 1129(a)(9) of the Bankruptcy Code and, in such event, unless otherwise provided herein, interest shall be paid on the unpaid portion of such Allowed Priority Tax Claim at the Federal statutory rate; provided, further, that deferred Cash payments on account of an Allowed Priority Tax Claim shall be paid quarterly over a period of six years commencing with the quarter after which such Priority Tax Claim has been Allowed.

## C. Classification and Treatment of Claims

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are classified in the Classes set forth below. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

### 1. Class A-1 – First Lien Lender Claims

First Lien Lender Claims include any Claim on account of the First Lien Credit Agreement.

AKIN GUMP STRAUSS HAUER & FELD LLP  
 One Bryant Park  
 New York, New York 10036  
 Tel: 212.872.1000 Facsimile: 212.872.1002 / akingump.com

Class A-1 is Impaired and entitled to vote to accept or reject the Plan. On the Effective Date or such other date as set forth herein, each of the First Lien Lenders (or its Permitted Nominee) shall receive on account of its Claims, (w) its pro rata share of \$1.5 million in Cash, (x) its pro rata share of 100% of the New First Lien Notes, (y) its pro rata share of 100% of the Newco Equity Interests (subject to dilution for any Newco Equity Interests issued pursuant to a Management and Director Equity Incentive Plan); and (z) its pro rata share of the Litigation Trust Interests allocable to the Holders of the First Lien Lender Claims. The \$1.5 million payment to the First Lien Lenders shall be allocated and deemed paid to the First Lien Lenders in accordance with Article VII.F. of the Plan.

2. Class A-2 – Second Lien Lender Claims

Second Lien Lender Claims include any Claim on account of the Second Lien Credit Agreement.

Class A-2 is Impaired and entitled to vote to accept or reject the Plan. On the Effective Date, only if the Class of Second Lien Lender Claims votes in favor of the Plan, each of the Second Lien Lenders (or its Permitted Nominee) shall receive (x) its pro rata share of 50% of the net proceeds of the Stanley Engineering Litigation; and (y) its pro rata share of the Litigation Trust Interests allocable to the Holders of the Second Lien Lender Claims on account of its deficiency claims, without a reduction on account of the reasonable fees and expenses of Ropes & Gray LLP and local counsel for the Second Lien Agent, subject to an aggregate cap of \$500,000. If the Class of Second Lien Lender Claims votes against the Plan, each of the Second Lien Lenders shall receive its pro rata share of the Litigation Trust Interests allocable to the Holders of the Second Lien Lender Claims on account of its deficiency claims, subject to payment of the reasonable fees and expenses of Ropes & Gray LLP and local counsel for the Second Lien Agent.

3. Class A-3 – Other Secured Claims

Other Secured Claims include any Secured Claim other than a: (a) First Lien Lender Claim; or (b) Second Lien Lender Claim.

Class A-3 is Unimpaired and deemed to accept the Plan. To the extent not satisfied by the Debtors, pursuant to Bankruptcy Court order, in the ordinary course of business prior to the Effective Date, at the option of the Reorganized Debtors on or after the Effective Date (i) an Allowed Other Secured Claim shall be Reinstated and rendered Unimpaired in accordance with section 1124(2) of the Bankruptcy Code, (ii) a Holder of an Allowed Other Secured Claim shall receive Cash in an amount equal to such Allowed Other Secured Claim, including any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the later of the Effective Date and the date such Other Secured Claim becomes an Allowed Other Secured Claim, or as soon thereafter as is practicable, (iii) a Holder of an Allowed Other Secured Claim shall receive the Collateral securing both its Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (iv) a Holder of an Allowed Other Secured Claim shall receive such treatment as to which such Holder and the Reorganized Debtors or the Debtors, with the consent of the First Lien

1 Steering Committee (and in consultation with the First Lien Agent and Second Lien Agent),  
2 otherwise agree.

3 4. Class B – Priority Non-Tax Claims

4 Priority Non-Tax Claims include any Claim accorded priority in right of payment  
5 pursuant to section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an  
6 Administrative Claim.

6 Class B is Unimpaired and deemed to accept the Plan. Each Holder of an Allowed  
7 Priority Non-Tax Claim shall receive Cash in an amount equal to such Allowed Priority Non-  
8 Tax Claim on the later of the Effective Date and the date such Priority Non-Tax Claim  
9 becomes an Allowed Priority Non-Tax Claim, or as soon thereafter as is practicable, unless the  
10 Holder of an Allowed Priority Non-Tax Claim and the Reorganized Debtors or the Debtors,  
with the consent of the First Lien Steering Committee (and in consultation with the First Lien  
Agent and Second Lien Agent), otherwise agree.

11 5. Class C-1 – General Unsecured Claims (other than Rhodes Entities Claims)

12 General Unsecured Claims include any Claim (including any Allowed Rhodes Entities  
13 Claims) against any of the Debtors that is not a/n (a) Administrative Claim, (b) Priority Tax  
14 Claim, (c) Priority Non-Tax Claim, (d) First Lien Lender Claim, (e) Second Lien Lender  
Claim, (f) Other Secured Claim, (g) Subordinated Claim, or (h) Intercompany Claim.

15 Class C-1 is Impaired and entitled to vote to accept or reject the Plan. On the Effective  
16 Date, each Holder of an Allowed General Unsecured Claim (including any Allowed Rhodes  
17 Entities Claims) shall receive its pro rata share of the Litigation Trust Interests allocable to the  
Holders of General Unsecured Claims on account of its Allowed Claim.

18 6. Class C-2 – Subordinated Claims

19 Subordinated Claims include all Claims subject to subordination under Bankruptcy  
20 Code section 510.

21 Class C-6 is Impaired and deemed to have rejected the Plan. Claims subordinated  
22 under applicable law (including any Rhodes Entities Claims that are subordinated) shall not  
receive any recovery on account of their Claims.

23 7. Class D – Old Equity Interests

24 Old Equity Interests include all of the Interests in any of the Debtors and any rights,  
25 options, warrants, calls, subscriptions or other similar rights or agreements, commitments or  
outstanding securities obligating the Debtors to issue, transfer or sell any Interests.

26 Class D is Impaired and deemed to reject the Plan. Each holder of an Old Equity  
27 Interest shall not be entitled to, and shall not receive or retain any property or interest in  
28 property on account of such Old Equity Interest.

1           8.     Class E – Intercompany Claims

2           Intercompany Claims include any Claim held by a Debtor against another Debtor.

3           Class E is Impaired and deemed to reject the Plan. At the election of the Reorganized  
4 Debtors, Intercompany Claims will be (i) reinstated, in full or in part, (ii) resolved through  
5 set-off, distribution, or contribution, in full or in part, or (iii) cancelled and discharged, in full  
6 or in part, in which case such discharged and satisfied portion shall be eliminated and the  
7 Holders thereof shall not be entitled to, and shall not receive or retain, any property or interest  
8 in property on account of such portion under the Plan.

9           D.     Cramdown

10          The Plan Proponent will request Confirmation of the Plan under section 1129(b) of the  
11 Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to  
12 section 1126 of the Bankruptcy Code. The First Lien Steering Committee reserves the right to  
13 modify the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the  
14 Bankruptcy Code requires modification.

15          E.     Means for Implementation of the Plan

16           1.     Substantive Consolidation

17          The Plan shall serve as a motion by the First Lien Steering Committee seeking entry of  
18 a Bankruptcy Court order substantively consolidating all of the Estates into a single  
19 consolidated Estate for all purposes associated with Confirmation and distributions to be made  
20 under the Plan. The effect of substantive consolidation is that on the Effective Date: (a) solely  
21 for the purposes of the Plan and the distributions and transactions contemplated thereunder, all  
22 assets and liabilities of the Debtors' Estates shall be deemed consolidated into a single estate;  
23 (b) all cross-corporate guarantees made by the Debtors prepetition shall be deemed eliminated  
24 (regardless of whether such guaranty is secured, unsecured, liquidated, unliquidated,  
25 contingent, or dispute); (c) any obligation of any Debtor and all guarantees thereof executed  
26 by one or more of the Debtors shall be deemed to be a single obligation of the consolidated  
27 Debtors; (d) any Claims filed or to be filed in connection with any such obligation and such  
28 guarantees referenced in subsection (c) hereof shall be deemed to be a single Claim against  
the consolidated Debtors; (e) each and every Claim filed in the individual Chapter 11 Case of  
any of the Debtors shall be deemed to be a single obligation of all of the Debtors under the  
Plan; (f) all duplicative Claims (identical in both amount and subject matter) Filed against  
more than one of the Debtors shall be automatically expunged so that only one Claim survives  
against the consolidated Debtors (but in no way shall such surviving Claim be deemed  
Allowed by reason of this Section); and (g) the Intercompany Claims will be automatically  
eliminated. All Claims based upon guarantees of collection, payment or performance made by  
the Debtors as to the obligations of another Debtor or of any other Person shall be discharged,  
released and of no further force and effect; provided, however, that nothing in the Plan shall  
affect the obligations of each of the Debtors under the Plan. Notwithstanding the substantive  
consolidation of these Cases for purposes of the Plan, each of the Debtors shall, as  
Reorganized Debtors, continue to exist after the Effective Date as separate corporate entities.

AKIN GUMP STRAUSS HAUER & FELD LLP  
 One Bryant Park  
 New York, New York 10036  
 Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

Substantive consolidation causes no harm to creditors and the benefits of substantive consolidation are numerous. First, over \$12 billion in duplicate secured debt will be eliminated because the First Lien Lender Claims and the Second Lien Lender Claims each will be allowed only once against the consolidated Estate. Second, over \$500 million in Intercompany Claims will be deemed eliminated because the multiple Debtors will be deemed only one Debtor. Third, over \$4.6 million of other duplicate Unsecured Claims that have been filed in multiple Chapter 11 Cases will be automatically eliminated. Fourth, approximately 35% of the Claims that have been Filed are asserted incorrectly against the wrong Debtor. Substantive consolidation will eliminate the need for the objection to such Claims. Accordingly, the Plan Proponent submits that substantive consolidation is warranted in the Chapter 11 Cases.

The following additional factors support substantive consolidation:

- The Debtors operate as a single business enterprise called “Rhodes Homes” rather than along distinct legal entities.
- The Debtors operate on a centralized basis with a central cash management system. All of the Debtors’ operating expenses are paid for by one Debtor entity on behalf of the other Debtors. Likewise, all funds received by the Debtors are automatically remitted to the central cash management account as required by the First Lien Credit Agreement. The Debtors’ financial reporting is also on a consolidated basis and the Debtors file consolidated tax returns.
- The Debtors share common parent companies. The Debtors have overlapping directors or managing members and officers among parent and subsidiaries. Because the Debtors all have the same director/managing member and principal shareholder, Mr. Rhodes, there were no regular meeting of the subsidiaries’ boards of directors. Also, for most of the Debtors who are LLCs, no board meetings are required. Rather, all corporate actions are done by written consent of the sole shareholder and director/ managing member. All of the Debtors’ corporate activities are characterized by centralized decision making, including the filing of the bankruptcies.
- All of the Debtors rely on the corporate office for their accounting, legal, human resources, administrative support. In addition to shared corporate support, all of the Debtors also share common insurance policies.
- The Debtors regularly conduct business with each other such that the flow of funds is numerous and would be extraordinarily difficult and time consuming to disentangle. As of the Petition Date, the Debtors estimate that approximately \$500 million in intercompany claims were owed between the Debtors.
- The Debtors are all obligated, either as obligors or guarantors, on the First Lien Lender Claims and Second Lien Lender Claims.



- Based on the 461 Proofs of Claims Filed, at least 160 claimants have Filed Claims against the wrong Debtor entity. Therefore, there is confusion amongst the Creditor body as to which Debtor is the Debtor that is legally obligated on the Claim.

## 2. Sources of Consideration for Plan Distributions

The Reorganized Debtors shall fund distributions under the Plan with Cash on hand, existing assets, and the issuance of the New First Lien Notes and Newco Equity Interests.

### a. Newco Equity Interests

On the Effective Date, but not more than thirty days after the Effective Date for initial distributions on account of Allowed Claims, Newco shall issue Newco Equity Interests (based upon the Newco Total Enterprise Value) to the Holders of First Lien Lender Claims. Each share of Class A-2 Equity Interest will be convertible at the option of the holder, exercisable at any time, into one Class A-1 Equity Interest.

The economic rights of the Class A-1 Equity Interests and Class A-2 Equity Interests shall be identical. The Class A-2 Equity Interests will not be entitled to general voting rights, but will be entitled to vote on an "as converted" basis (together with the holders of the Class A-1 Equity Interests, as a single class) on certain non-ordinary course transactions, including (i) any authorization of, or increase in the number of authorized shares of, any class of capital stock ranking equal or senior to the Newco Equity Interests as to dividends or liquidation preference, including additional Newco Equity Interests, (ii) any amendment to the Newco's certificate of incorporation or by-laws, (iii) any amendment to any shareholders agreement, (iv) any sale, lease or other disposition of all or substantially all of the assets of the Reorganized Debtors through one or more transactions, (v) any recapitalization, reorganization, consolidation or merger of the Reorganized Debtors, (vi) to the extent that holders of Class A-1 Equity Interests have the right to vote thereon, any issuance or entry into an agreement for the issuance of capital stock (or any options or other securities convertible into capital stock) of the Reorganized Debtors, except as may be provided for under any management incentive plan, and (vii) to the extent that holders of Class A-1 Equity Interests have the right to vote thereon, any redemption, purchase or other acquisition by the Newco of any of its capital stock (except for purchases from employees upon termination of employment).

The Class A-2 Equity Interests will be entitled to a separate class vote on any amendment or modification of any rights or privileges of the Class A-2 Equity Interests that does not equally affect the Class A-1 Equity Interests. In any liquidation, dissolution or winding up of the Reorganized Debtors, all assets will be distributed to holders of the Newco Equity Interests on a pro rata basis.

### (i) Section 1145 Exemption

Pursuant to section 1145 of the Bankruptcy Code, the offering, issuance, and distribution of any Securities contemplated by the Plan and any and all settlement agreements incorporated

AKIN GUMP STRAUSS HAUER & FELD LLP  
 One Bryant Park  
 New York, New York 10036  
 Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

therein, including the Newco Equity Interests, shall, to the fullest extent permitted by applicable law, be exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of Securities. In addition, under section 1145 of the Bankruptcy Code any Securities contemplated by the Plan, including the Newco Equity Interests and New First Lien Notes, will be freely tradable and transferable by the recipients thereof, subject to (i) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with any rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (ii) the restrictions, if any, on the transferability of such Securities and instruments set forth in the Stockholders Agreement; and (iii) applicable regulatory approval.

(ii) Issuance and Distribution of the Newco Equity Interests

The Newco Equity Interests, when issued or distributed as provided in the Plan, will be duly authorized, validly issued, and, if applicable, fully paid and nonassessable. Each distribution and issuance shall be governed by the terms and conditions set forth in the Plan applicable to such distribution or issuance and by the terms and conditions of the instruments evidencing or relating to such distribution or issuance, which terms and conditions shall bind each Entity receiving such distribution or issuance.

b. New First Lien Notes

On the Effective Date or as soon as reasonably practicable thereafter, Newco shall issue the New First Lien Notes. The Reorganized Debtors shall be co-borrowers and guarantors under the New First Lien Notes. The New First Lien Notes shall have the terms set forth on Exhibit 2 to the Plan and as otherwise provided in the terms of the documents governing the New First Lien Notes which shall be included in the Plan Supplement.

c. Exit Financing

To the extent the board of directors of Newco (or such other governing body) determines that additional financing is necessary for the operation of the Reorganized Debtors' businesses, Newco and/or the Reorganized Debtors may obtain additional financing. The First Lien Steering Committee does not anticipate that additional sources of funding in addition to Cash on hand, the Newco Equity Interests and the New First Lien Notes will be necessary to fund distributions under the Plan on the Effective Date.

3. Corporate Existence

Except as otherwise provided in the Plan, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws

(or other formation documents) are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be pursuant to the Plan and require no further action or approval.

#### 4. Vesting of Assets in the Reorganized Debtors

Except for any Claims or Causes of Action transferred to the Litigation Trust and unless otherwise provided in the Plan or any agreement, instrument, or other document incorporated therein, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

#### 5. Cancellation of Equity Securities and Related Obligations

On the Effective Date, except as otherwise specifically provided for in the Plan: (1) the Old Equity Interests and any other Certificate, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest (except such Certificates, notes, other instruments or documents evidencing indebtedness or obligations of the Debtors that are Reinstated pursuant to the Plan), shall be cancelled solely as to the Debtors, and the Reorganized Debtors shall not have any continuing obligations thereunder and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the Old Equity Interests and any other Certificates, notes, bonds, indentures, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors (except such agreements or Certificates, notes or other instruments evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the Plan) shall be released and discharged; provided, however, that notwithstanding Confirmation, any such indenture or agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of: (w) allowing Holders to receive distributions under the Plan; (x) allowing a Servicer to make distributions on account of such Claims as provided in the applicable governing agreement; (y) permitting such Servicer to maintain any rights and Liens it may have against property other than the Reorganized Debtors' property for fees, costs, and expenses pursuant to such indenture or other agreement; and (z) governing the rights and obligations of non-Debtor parties to such agreements vis-à-vis each other (including, without limitation, the rights and obligations of non-Debtor parties under the First Lien Credit Agreement and the Second Lien Credit Agreement, which, for the avoidance of doubt, shall not be affected by the Plan except as otherwise expressly provided in the Plan); provided, further, however, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to the Reorganized Debtors. The Reorganized Debtors shall not have

any obligations to any Servicer for any fees, costs, or expenses, except as expressly otherwise provided in the Plan.

#### 6. Restructuring Steps and Transfer of Certain Interests to Newco

In the event the Rhodes Entities comply with all of their obligations pursuant to the Mediation Settlement and the Plan, on the Effective Date or, in the case of step (d) below, effective the next day, the following transactions shall be deemed to have occurred in the order set forth below.

- a. Newco shall be formed as a new limited liability company. The First Lien Lender Claims shall be deemed to have been exchanged for the membership interests in Newco. Newco shall be deemed to hold all of the First Lien Lender Claims. At the option of a holder, membership interests in Newco may be transferred to a corporation prior to step (b).
- b. Newco shall purchase all of the Heritage Equity Securities for \$10.00.
- c. Contemporaneous with or subsequent to Newco's purchase of the Heritage Equity Securities, The Rhodes Companies, LLC - the general partner of each of Tick, LP; Glynda, LP; Jackknife, LP; LP; Batcave, LP; Overflow, LP; Wallboard, LP; and Chalkline, LP, --shall sell its general partnership interests in such entities to Newco for \$1.00. Alternatively, the membership interest in The Rhodes Companies, LLC may be acquired from its sole member - Sagebrush Enterprises, Inc. - in consideration for release of its obligations under the First Lien Lender Claims.
- d. Newco's members may agree to continue Newco as an LLC, file a check the box election effective the day after the Effective Date to treat Newco as a corporation for tax purposes, or convert into a corporation as of the day after the Effective Date.

In any event, to the extent any cancellation of indebtedness is derived from the foregoing transactions under the Internal Revenue Code, it shall be allocable to the holders of the Old Equity Interests as required by the Internal Revenue Code. To be clear, Newco's purchase of the Heritage Equity Securities shall occur (a) contemporaneously with or immediately before the membership interests of those entities described in Article IV.E.6.c, immediately above, are acquired; (b) before any debt or obligations of the Debtors are canceled or forgiven; (d) before any new notes are issued or existing debt is modified by the Reorganized Debtors; and (e) before any of the other acts or events contemplated in Article III.B, et seq., of the Plan. The holders of the Heritage Equity Securities and Newco will report the sale and purchase of the Heritage Equity Securities in accordance with revenue ruling 99-6, 1991-1 CB 432.

#### 7. Restructuring Transactions

On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtors may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (1)



AKIN GUMP STRAUSS HAUER & FELD LLP  
 One Bryant Park  
 New York, New York 10036  
 Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

the execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan; (3) the filing of appropriate certificates of incorporation, merger, or consolidation with the appropriate governmental authorities pursuant to applicable law; (4) the Roll-Up Transactions; (5) the establishment of a liquidation trust or other appropriate vehicle to hold assets for sale that will not be utilized in the business of the Reorganized Debtors; and (6) all other actions that the Reorganized Debtors determine are necessary or appropriate, including the making of filings or recordings in connection with the relevant Roll-Up Transactions. The form of each Roll-Up Transaction shall be determined by the Reorganized Debtor that is party to such Roll-Up Transaction. Implementation of the Roll-Up Transactions shall not affect any distributions, discharges, exculpations, releases, or injunctions set forth in the Plan.

#### 8. Corporate Action

Each of the matters provided for by the Plan involving the corporate structure of the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by Holders of Claims or Interests, directors of the Debtors, or any other Entity. Without limiting the foregoing, such actions may include: the adoption and filing of the Newco Charter and Newco Bylaws; the adoption and filing of amended organization documents of the other Reorganized Debtors; the appointment of directors and officers for the Reorganized Debtors; the execution of the Stockholders Agreement; and the adoption, implementation, and amendment of the Management and Director Equity Incentive Plan.

#### 9. Post-Confirmation Property Sales

To the extent the Reorganized Debtors sell any of their property prior to or including the date that is one year after Confirmation, the Reorganized Debtors may elect to sell such property pursuant to sections 363, 1123, and 1146(a) of the Bankruptcy Code.

#### 10. Certificate of Incorporation and Bylaws

The certificates of incorporation and bylaws (or other formation documents relating to limited liability companies, limited partnerships or other forms of Entity) of the Debtors shall be amended, in form and substance acceptable to the First Lien Steering Committee, as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code. The Newco Charter and Newco Bylaws shall be in form and substance acceptable to the First Lien Steering Committee and shall be included in the Plan Supplement, which will be Filed on the Plan Supplement Filing Date. The certificate of incorporation of Newco shall, among other things: (1) authorize issuance of the Newco Equity Interests; and (2) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting Equity Securities. On or as soon as reasonably



practicable after the Effective Date, to the extent required, each of the Reorganized Debtors shall file new certificates of incorporation (or other formation documents relating to limited liability companies limited partnerships, or other forms of Entity) in form and substance acceptable to First Lien Steering Committee, with the secretary (or equivalent state officer or Entity) of the state under which each such Reorganized Debtor is or is to be incorporated or organized. On or as soon as reasonably practicable after the Effective Date, to the extent required, Newco shall file the Newco Charter with the secretary (or equivalent state officer or Entity) of the state under which Newco is to be incorporated or organized. After the Effective Date, each Reorganized Debtor may amend and restate its new certificate of incorporation and other constituent documents as permitted by the relevant state corporate law.

#### 11. Effectuating Documents, Further Transactions

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors (or other governing bodies) thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required pursuant to the Plan.

#### 12. Exemption from Certain Transfer Taxes and Recording Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfer from a Debtor to a Reorganized Debtor or to any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors; (2) the creation, modification, consolidation, or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (3) the making, assignment, or recording of any lease or sublease; or (4) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### 13. Directors and Officers of the Reorganized Debtors

On the Effective Date, the board of directors of the Reorganized Debtors or similar governing entities shall be composed of one or more members appointed by the First Lien Steering Committee. On the Effective Date, a chief executive officer or similar officer selected by the

1 board of directors of the Reorganized Debtors shall be appointed. The identity of such officers  
2 and directors shall be disclosed prior to the Confirmation Hearing.

3 14. Management and Director Equity Incentive Plan

4 The Reorganized Debtors reserve the right to implement a Management and Director  
5 Equity Incentive Plan. The terms and conditions of any Management and Director Equity  
6 Incentive Plan shall be determined by the Board of Directors of Newco.

7 15. The Litigation Trust

8 On the Effective Date, the Litigation Trust will be implemented pursuant to the terms of  
9 the Litigation Trust Agreement. On the Effective Date, pursuant to the terms of the Litigation  
10 Trust Agreement, the Debtors will transfer the Litigation Trust Assets for and on behalf of the  
11 Litigation Trust Beneficiaries, which will be the Holders of Allowed Claims in Classes A-1, A-2  
12 and C-1. For all federal income tax purposes, the beneficiaries of the Litigation Trust shall be  
13 treated as grantors and owners thereof and it is intended that the Litigation Trust be classified as  
14 a liquidating trust under Section 301.7701-4 of the Treasury Regulations and that such trust is  
15 owned by its beneficiaries. Accordingly, for federal income tax purposes, it is intended that the  
16 Litigation Trust Beneficiaries be treated as if they had received a distribution of an undivided  
17 interest in the Litigation Trust Assets and then contributed such interests to the Litigation Trust.  
18 The Litigation Trust will initially be funded by the Litigation Trust Funding Amount, which will  
19 be transferred to the Litigation Trust on the Effective Date and which will be repaid to the  
20 Reorganized Debtors from the first proceeds received by the Litigation Trust.

21 The Litigation Trust shall issue non-transferable interests to Holders of Allowed First  
22 Lien Lender Claims, Allowed Second Lien Lender Claims, and Allowed General Unsecured  
23 Claims (including any Allowed Rhodes Entities Claims) with each Holder of an Allowed Claim  
24 in each of the foregoing Classes of Claims receiving its pro rata share of the Litigation Trust  
25 Interests allocable to each such Class of Claims.

26 16. Preservation of Causes of Action

27 In accordance with section 1123(b) of the Bankruptcy Code, except as otherwise  
28 provided in the Plan, the Reorganized Debtors and the Litigation Trust shall retain and may  
enforce all rights to commence and pursue, as appropriate, any and all Causes of Action,  
whether arising before or after the Petition Date, including any actions specifically  
enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence,  
prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence  
of the Effective Date. The Reorganized Debtors and the Litigation Trust, as applicable, may  
pursue such Causes of Action, as appropriate, in accordance with the best interests of the  
Reorganized Debtors and the Litigation Trust, as applicable. **No Entity may rely on the  
absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure  
Statement to any Cause of Action against them as any indication that the Debtors,  
Reorganized Debtors or the Litigation Trust, as applicable, will not pursue any and all  
available Causes of Action against them. The Reorganized Debtors and the Litigation  
Trust, as applicable, expressly reserve all rights to prosecute any and all Causes of**

**Action against any Entity, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors and the Litigation Trust, as applicable, expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or the occurrence of the Effective Date.

The Reorganized Debtors and the Litigation Trust, as applicable, reserve and shall retain the foregoing Causes of Action notwithstanding the rejection or repudiation of any executory contract or unexpired lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors and the Litigation Trust, as the case may be, on the Effective Date. The applicable Reorganized Debtor and the Litigation Trust, as applicable, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action belonging to it. The Reorganized Debtors and the Litigation Trust, as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. Neither the Litigation Trust nor the Reorganized Debtors shall commence any litigation against the Rhodes Entities until the Bankruptcy Court rules on the allowance of the Rhodes Entities Claims set forth in Proofs of Claim, included in the Debtors' Schedules or otherwise set forth in the Mediation Term Sheet. To the extent any statute of limitations to pursue any claims belonging to the Debtors against the Rhodes Entities would lapse from the execution date of the Mediation Term Sheet through the pending the Bankruptcy Court's resolution of the allowance of the Rhodes Entities Claims, the Rhodes Entities shall be deemed to have consented to an extension of the applicable statute of limitations until sixty days following the Bankruptcy Court's ruling on the allowance of the Rhodes Entities Claims. The Litigation Trust shall have no liability to any entity for any Claims or Causes of Action it determines not to pursue.

#### 17. HOA Board Seats

The Rhodes Entities shall ensure that designees identified by the Reorganized Debtors shall replace the Rhodes Entities on any HOA boards that in any way are related to the Debtors, Reorganized Debtors or their businesses and Declarant rights or the like shall be transferred to the Reorganized Debtors or their designee(s).

#### 18. Licensing

The Rhodes Entities shall take commercially reasonable steps and/or enter into any agreements or similar documentation reasonably necessary to ensure the Reorganized Debtors' continued use of all of the Debtors' applicable professional licenses at no cost to the Rhodes Entities for a period of up to twelve months following the Effective Date. To the extent, Sagebrush Enterprises, Inc. shall have rescinded by September 25, 2009 its revocation of its

AKIN GUMP STRAUSS HAUER & FELD LLP  
 One Bryant Park  
 New York, New York 10036  
 Tel: 212.872.1000 Facsimile: 212.872.1002 / [akingump.com](http://akingump.com)

indemnity of the Nevada contractors' license held by Rhodes Design & Development Corporation and such rescission did not negatively affect the general contractor's license held by Rhodes Design & Development Corporation, Sagebrush shall be entitled to file an Administrative Claim on behalf of any and all claims asserted against Sagebrush as a result of Sagebrush being the indemnitor that arose from and after the effectiveness of Sagebrush's rescission of its indemnity through the Effective Date, provided that the allowance of such Administrative Claim shall be subject to resolution by the Bankruptcy Court and/or such other court(s) of competent jurisdiction. The Reorganized Debtors shall indemnify Sagebrush for any and all claims asserted against Sagebrush as a result of Sagebrush being the indemnitor that arise from and after the Effective Date. Professional licenses include, but are not limited to the Nevada State Contractor's Board license, and any other general business or similar licenses in any county, state, municipality or other jurisdiction in which the Reorganized Debtors conduct business or own assets as of the Effective Date. The Rhodes Entities shall use commercially reasonable efforts to maintain third party agreements with their real estate brokers and sales agents.

#### 19. Transfer of Rhodes Ranch Golf Course

On the Effective Date, the applicable Rhodes Entities shall transfer their equity interests in the entity that owns the Rhodes Ranch Golf Course to the Reorganized Debtors (together with any equipment, golf carts, contracts or other assets determined by the First Lien Steering Committee to be necessary for the operation of the Rhodes Ranch Golf Course) pursuant to the terms of a stock transfer agreement in form and substance acceptable to the First Lien Steering Committee and Rhodes, subject to any outstanding debt on the Rhodes Ranch Golf Course. The stock transfer agreement shall contain representations by the Rhodes Entities that the entity that owns the Rhodes Ranch Golf Course does not have any liabilities other than ordinary course liabilities related to the Rhodes Ranch Golf Course and indemnification provisions in favor of the Reorganized Debtors by the Rhodes Entities for any non-ordinary course liabilities. In addition, prior to the deadline for filing objections to the Disclosure Statement, the Rhodes Entities shall provide the First Lien Steering Committee with a list of all liabilities of the entity that owns the Rhodes Ranch Golf Course, a lien analysis and copies of all contracts related to the Rhodes Ranch Golf Course and to which the entity that owns the Rhodes Ranch Golf Course is a party, each of which must be acceptable to the First Lien Steering Committee.

The existing debt outstanding on the Rhodes Ranch Golf Course shall be refinanced on or before the Effective Date, for a period of no less than twelve (12) months from the Effective Date, on terms and conditions acceptable to Rhodes and the First Lien Steering Committee. The parties will work together in good faith to refinance the existing debt. The Reorganized Debtors shall pay the reasonable costs and expenses associated with the refinancing; provided, that the terms of such refinancing are acceptable to the First Lien Steering Committee. The First Lien Steering Committee acknowledges that the loan documentation may provide that, upon the transfer of the Rhodes Ranch Golf Course to the Reorganized Debtors on the Effective Date, additional collateral from the Reorganized Debtors may be required. The Rhodes Entities shall transfer to the Reorganized Debtors on the Effective Date any contracts related to the operation of and revenue generated by any cell towers located on the property of the Rhodes Ranch Golf Course. Any funds received after July 31, 2009 from the Las Vegas Valley Water District or other similar entity as an incentive for converting the golf course from a green course to a desert



1 course shall be used for operating expenses associated with the Rhodes Ranch Golf Course, with  
2 any excess to become property of the Reorganized Debtors on the Effective Date.

3 Rhodes and/or his designee shall have the absolute right to repurchase the Rhodes Ranch  
4 Golf Course from the Reorganized Debtors at eight (8) years from the Effective Date for \$5.9  
5 million in cash. The Reorganized Debtors may require Rhodes to purchase the Rhodes Ranch  
6 Golf Course any time between four (4) and eight (8) years from the Effective Date for \$5.9  
7 million in cash provided that the Reorganized Debtors shall provide Rhodes with at least one  
8 year advance notice of its intent to sell the Rhodes Ranch Golf Course back to Rhodes. Such  
9 transfer shall occur on the applicable anniversary date of the Effective Date. For the avoidance  
10 of doubt, if the Reorganized Debtors put the Rhodes Ranch Golf Course to Rhodes in accordance  
11 with the terms hereof and Rhodes fails to comply with his obligation to purchase the Rhodes  
12 Ranch Golf Course, Rhodes shall be deemed to have forfeited his option to purchase the Rhodes  
13 Ranch Golf Course.

14 On the Effective Date, Rhodes's obligations to comply with the repurchase shall be  
15 secured by either (i) \$500,000 in cash in an escrow account or (ii) property worth at least \$2  
16 million (the "Golf Course Security Property"), with the value of such property to be agreed to by  
17 Rhodes and the First Lien Steering Committee or otherwise valued by an independent third party  
18 appraisal firm acceptable to both Rhodes and the First Lien Steering Committee (except  
19 Cushman Wakefield). In the event that Rhodes does not meet the repurchase request, provided  
20 that the Rhodes Ranch Golf Course is in the standard condition (defined below), then the  
21 Reorganized Debtors shall be entitled to liquidated damages in the form of security pledged (i.e.,  
22 the \$500,000 or the Golf Course Security Property).

23 So long as Rhodes has not defaulted on his obligation to repurchase the Rhodes Ranch  
24 Golf Course, Rhodes shall have the absolute and sole discretion to replace the Golf Course  
25 Security Property with \$500,000 in cash on 30 days written notice to the Reorganized Debtors.  
26 Upon deposit of the \$500,000 in cash, the Golf Course Security Property shall be released to  
27 Rhodes or his designee. Notwithstanding anything to the contrary contained herein, if the  
28 Rhodes Ranch Golf Course is not maintained with substantially the same performance and rating  
criteria at the time of the repurchase request as verified by an independent third party rating  
agency as it was on the Effective Date ("Standard Condition"), James Rhodes can (i) require the  
Reorganized Debtors to cure any conditions to return the Rhodes Ranch Golf Course to its  
Standard Condition (provided, that the cost of such cure does not exceed \$500,000), or (ii)  
choose not to purchase the Rhodes Ranch Golf Course. Upon either the repurchase of the  
Rhodes Ranch Golf Course or the written decision to not repurchase the Rhodes Ranch Golf  
Course (in accordance with the preceding sentence), the Golf Course Security Property or the  
\$500,000 Cash (if not applied to the repurchase of the Rhodes Ranch Golf Course) shall be  
returned to Rhodes within 30 days.

On the Effective Date, the Reorganized Debtors shall record a memorandum of agreement  
against the Rhodes Ranch Golf Course to evidence the above.



1           20.   Cash Payment

2           The Rhodes Entities shall make a cash payment to the Reorganized Debtors of \$3.5  
3 million in Cash on the Effective Date.

4           21.   Transfer of Arizona Assets

5           On the Effective Date, pursuant to an asset transfer agreement in form and substance  
6 acceptable to the First Lien Steering Committee and the Rhodes Entities, the Debtors shall  
7 transfer Pravada and the other Arizona Assets set forth on Attachment D to the Mediation  
8 Term Sheet, plus the Golden Valley Ranch tradename to the Rhodes Entities free and clear of  
9 all liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code;  
10 provided, that the non-First Lien Lender/Second Lien Lender liens do not exceed \$60,000;  
11 provided, that such assets shall not include assets owned by Pinnacle Grading located in  
12 Arizona and related contracts associated with the assets. The Debtors shall provide James  
13 Rhodes notice of any proposed sale of the Pinnacle assets, and James Rhodes shall be granted  
14 a right to bid on the sale of such assets within 10 days of such notice. The Rhodes Entities  
15 shall permit storage of Pinnacle Grading equipment at current locations at no cost to the  
16 Reorganized Debtors for a period through six months following the Effective Date.

17           All executory contracts and unexpired leases associated solely with Arizona shall be  
18 assumed and assigned to the Rhodes Entities (or their designee), at no cost to the Debtors or  
19 the Reorganized Debtors and all cure costs associated therewith shall be borne by the Rhodes  
20 Entities.

21           22.   Trademark and Trade Names

22           Within the earlier of thirty (30) days following: (i) upon completion of the buildout of  
23 all of the Reorganized Debtors' homebuilding assets and inventory (regardless of when such  
24 assets and inventory were acquired), or (ii) bulk sale of the remaining inventory of the  
25 Reorganized Debtors, the Reorganized Debtors shall transfer to James Rhodes (or his  
26 designee) the trademarks and tradenames set forth on Attachment E to the Mediation Term  
27 Sheet.

28           23.   Self Insured Retention Obligations

          The Reorganized Debtors shall indemnify subcontractors that are obligated under any  
of the Reorganized Debtors' existing insurance policies for any post-Effective Date self  
insured retention obligations paid and/or to be paid by such subcontractors pursuant to such  
existing insurance policies.

          24.   Bond Replacement or Indemnification

          Those performance bonds guaranteed by the Rhodes Entities in favor of the Debtors shall  
be replaced on a renewal date by new performance bonds. In the alternative, subject to the  
Rhodes Entities being reasonably satisfied with the creditworthiness of the Reorganized Debtors,  
which shall be satisfied solely as of the Effective Date by the Court finding that the Plan is  
feasible, the existing performance bonds guaranteed by the Rhodes Entities and such guarantees

shall remain in place. The applicable Rhodes Entity's agreement to remain a guarantor under the existing performance bonds as such performance bonds may be renewed shall be at no cost to the Rhodes Entities (including, but not limited to, the payment of bond premiums). In the event the Reorganized Debtors fail to perform their obligations underlying such renewed performance bonds after the Effective Date, the Reorganized Debtors will indemnify the Rhodes Entities under such outstanding performance bonds for damages incurred by the Rhodes Entities on account of their guarantee of such performance bonds solely as a result of the Reorganized Debtors' failure to perform such obligations subsequent to the Effective Date. The Reorganized Debtors shall use commercially reasonable efforts to replace all outstanding performance bonds backstopped by Rhodes Entities within 30 months of the Effective Date. The Bankruptcy Court shall retain jurisdiction to resolve any disputes arising out of this paragraph.

Contingent Bond Indemnity Claims will be released in the ordinary course of business as time passes or as work on the underlying project is completed. To the extent that a Contingent Bond Indemnity Claim becomes an Allowed or estimated Claim, such Contingent Bond Indemnity Claim shall be treated as a General Unsecured Claim.

#### 25. Stanley Engineering Litigation

In the event the Stanley Engineering Litigation is resolved either by judgment or settlement in a manner favorable to the Reorganized Debtors and such resolution does not provide for Cash consideration to be received by the Reorganized Debtors and Second Lien Lenders, the Reorganized Debtors and the Second Lien Agent shall engage in good faith negotiations to ensure that the Second Lien Lenders receive consideration equivalent to 50% of the net value of such resolution and to determine the timing of payment of any such consideration. In the event the Reorganized Debtors and the Second Lien Agent are unable to agree on the amount or form of such consideration, the parties will submit the matter to binding arbitration with the costs thereof to be split evenly among the Reorganized Debtors and the Second Lien Agent (with the costs of the Second Lien Agent to be reimbursed from the consideration to be distributed to the Second Lien Lenders on account of the Stanley Engineering Litigation).

#### F. Treatment of Executory Contracts and Unexpired Leases

##### 1. Assumption and Rejection of Executory Contracts and Unexpired Leases

Except as otherwise provided in the Plan, the Debtors' executory contracts or unexpired leases not assumed or rejected pursuant to a Bankruptcy Court order prior to the Effective Date shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, except for those executory contracts or unexpired leases: (1) listed on the schedule of "Assumed Executory Contracts and Unexpired Leases" in the Plan Supplement; (2) that are Intercompany Contracts, in which case such Intercompany Contracts are deemed automatically assumed by the applicable Debtor as of the Effective Date, unless such Intercompany Contract previously was rejected by the Debtors pursuant to a Bankruptcy Court order, is the subject of a motion to reject pending on the Effective Date; (3) that are the subject of a motion to assume or reject pending on the Effective Date (in which case such assumption or rejection and the effective date thereof shall remain subject to a Bankruptcy

1 Court order); (4) that are subject to a motion to reject with a requested effective date of  
 2 rejection after the Effective Date; or (5) that are otherwise expressly assumed or rejected  
 3 pursuant to the Plan. Entry of the Confirmation Order shall constitute a Bankruptcy Court  
 4 order approving the assumptions or rejections of such executory contracts or unexpired leases  
 5 as set forth in the Plan, all pursuant to sections 365(a) and 1123 of the Bankruptcy Code.  
 6 Unless otherwise indicated, all assumptions or rejections of such executory contracts and  
 7 unexpired leases in the Plan are effective as of the Effective Date. Each such executory  
 8 contract and unexpired lease assumed pursuant to the Plan or by Bankruptcy Court order but  
 9 not assigned to a third party prior to the Effective Date shall revert in and be fully enforceable  
 10 by the applicable contracting Reorganized Debtor in accordance with its terms, except as such  
 11 terms may have been modified by such order. Notwithstanding anything to the contrary in the  
 12 Plan, the Plan Proponent and the Reorganized Debtors, as applicable, reserve the right to alter,  
 13 amend, modify, or supplement the schedules of executory contracts or unexpired leases  
 14 identified in the Plan Supplement at any time through and including fifteen days after the  
 15 Effective Date. All executory contracts and unexpired leases associated solely with the  
 16 Arizona Assets shall be assumed and assigned to the Rhodes Entities (or their designee) to the  
 17 extent set forth on the schedule of Assumed Executory Contracts and Unexpired Leases in the  
 18 Plan Supplement, at no cost to the Debtors or the Reorganized Debtors and all Cure costs  
 19 associated with such scheduled Arizona contracts or leases shall be borne by the Rhodes  
 20 Entities.

## 2. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases

21 With respect to each of the Debtors' executory contracts or unexpired leases listed on  
 22 the schedule of "Assumed Executory Contracts and Unexpired Leases," the Plan Proponent  
 23 shall have designated a proposed Cure, and the assumption of such executory contract or  
 24 unexpired lease may be conditioned upon the disposition of all issues with respect to Cure.  
 25 Any provisions or terms of the Debtors' executory contracts or unexpired leases to be assumed  
 26 pursuant to the Plan that are, or may be, alleged to be in default, shall be satisfied solely by  
 27 Cure, or by an agreed-upon waiver of Cure. Except with respect to executory contracts and  
 28 unexpired leases in which the Plan Proponent or the Debtors, with the consent of the First  
 Lien Steering Committee, and the applicable counterparties have stipulated in writing to  
 payment of Cure, all requests for payment of Cure that differ from the amounts proposed by  
 the Debtors must be Filed with the Court on or before the Cure Bar Date. Any request for  
 payment of Cure that is not timely Filed shall be disallowed automatically and forever barred  
 from assertion and shall not be enforceable against any Reorganized Debtor, without the need  
 for any objection by the Reorganized Debtors or further notice to or action, order, or approval  
 of the Bankruptcy Court, and any Claim for Cure shall be deemed fully satisfied, released, and  
 discharged upon payment by the Debtors of the amounts listed on the proposed Cure schedule,  
 notwithstanding anything included in the Schedules or in any Proof of Claim to the contrary;  
provided, however, that nothing shall prevent the Reorganized Debtors from paying any Cure  
 despite the failure of the relevant counterparty to File such request for payment of such Cure.  
 The Reorganized Debtors also may settle any Cure without further notice to or action, order,  
 or approval of the Bankruptcy Court.

If the Debtors or Reorganized Debtors, as applicable, or First Lien Steering Committee  
 object to any Cure or any other matter related to assumption, the Bankruptcy Court shall

determine the Allowed amount of such Cure and any related issues. If there is a dispute regarding such Cure, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then Cure shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors with the consent of the First Lien Steering Committee, or the Reorganized Debtors and the counterparty to the executory contract or unexpired lease. Any counterparty to an executory contract and unexpired lease that fails to object timely to the proposed assumption of any executory contract or unexpired lease will be deemed to have consented to such assumption. The Debtors, with the consent of the First Lien Steering Committee, or the Reorganized Debtors, as applicable, reserve the right either to reject or nullify the assumption of any executory contract or unexpired lease no later than thirty days after a Final Order determining the Cure or any request for adequate assurance of future performance required to assume such executory contract or unexpired lease.

Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption. Any Proofs of Claim Filed with respect to an executory contract or unexpired lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

All Cure costs associated with Executory Contracts related to the Arizona Assets shall be borne by the Rhodes Entities.

### 3. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases

Rejection or repudiation of any executory contract or unexpired lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors under such contracts or leases. In particular, notwithstanding any nonbankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, insurance coverage, utility services, warranties, indemnity, guarantee of workmanship, or continued maintenance obligations on goods or services previously purchased by the contracting Debtors or Reorganized Debtors, as applicable, from counterparties to rejected or repudiated executory contracts. The Reorganized Debtors expressly reserve and do not waive the right to receive coverage under any past insurance policy to extent that coverage has not expired under the terms of the insurance policy, regardless of whether such insurance policy is listed as an assumed contract. Similarly, the Reorganized Debtors expressly reserve and do not waive the right to receive services under any contract with a utility provider, regardless of whether such agreement with a utility provider is listed as an assumed contract.



1           4.     Claims Based on Rejection or Repudiation of Executory Contracts and  
 2                 Unexpired Leases

3           Unless otherwise provided by a Bankruptcy Court order, any Proofs of Claim asserting  
 4           Claims arising from the rejection or repudiation of the Debtors' executory contracts and  
 5           unexpired leases pursuant to the Plan or otherwise must be Filed with the Claims and  
 6           Solicitation Agent no later than the Rejection Damages Claim Deadline. Any Proofs of Claim  
 7           arising from the rejection or repudiation of the Debtors' executory contracts or unexpired  
 8           leases that are not timely Filed by the Rejection Damages Claim Deadline shall be disallowed  
 9           automatically, forever barred from assertion, and shall not be enforceable against any  
 10          Reorganized Debtor without the need for any objection by the Reorganized Debtors or further  
 11          notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of  
 12          the rejection or repudiation of the executory contract or unexpired lease shall be deemed fully  
 13          satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of  
 14          Claim to the contrary. All Allowed Claims arising from the rejection or repudiation of the  
 15          Debtors' executory contracts and unexpired leases shall be classified as General Unsecured  
 16          Claims.

17           5.     Intercompany Contracts, Contracts, and Leases Entered Into After the Petition  
 18                 Date

19           Intercompany Contracts, contracts, and leases entered into after the Petition Date by  
 20           any Debtor, and any executory contracts and unexpired leases assumed by any Debtor, may be  
 21           performed by the applicable Reorganized Debtor in the ordinary course of business.

22           6.     Home Sales

23           All pending home sale contracts shall be assumed by the applicable Reorganized  
 24           Debtor.

25           7.     Warranties

26           All eligible prepetition home sale contracts with one-year warranty obligations shall be  
 27           performed in the ordinary course of business of the Reorganized Debtors. Upon the Effective  
 28           Date, any remaining warranty obligations that are to be assumed by the Reorganized Debtors,  
 which shall only be assumed with the consent of the First Lien Steering Committee, shall be  
 transferred to the Reorganized Debtors. Warranty obligations that are not expressly assumed  
 shall be rejected and treated as General Unsecured Claims.

29           8.     Modification of Executory Contracts and Unexpired Leases Containing Equity  
 30                 Ownership Restrictions

31           All executory contracts and unexpired leases to be assumed, or conditionally assumed,  
 32           under the Plan pursuant to sections 365 and 1123 of the Bankruptcy Code shall be deemed so  
 33           assumed, or so conditionally assumed, without giving effect to any provisions contained in  
 34           such executory contracts or unexpired leases restricting the change in control or ownership  
 35           interest composition of any or all of the Debtors, and upon the Effective Date (1) any such  
 36           restrictions shall be deemed of no further force and effect and (2) any breaches that may arise